EMPLOYMENT TRIBUNALS

Claimant: **Lucy Sabia**

Respondent: **KeolisAmey Docklands Ltd**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **21 January 2021**

Before: **Employment Judge Housego**

Representation

Claimant: Ola Omope of Adam Bernard, Solicitors
Respondent: Paman Singh of Law at Work, Marlowes Plc

JUDGMENT

1. **The Claimant was unfairly dismissed by the Respondent.**

2. **The case will be relisted for a remedy hearing.**

REASONS

Summary

1. I gave a full extempore decision on 21 January 2021. The Respondent asked for full written reasons, and so this judgment is prepared.

2. The Respondent says that it dismissed the Claimant for asserted gross misconduct: her conduct at a meeting on 29 April 2020 when she is said[1] to have raised her voice to her manager and a colleague, slammed her book on a desk, poked a colleague in the arm, and had on previous occasions raised her voice to others. Ms Sabia accepts this was the reason, but says that it was not fair to dismiss her. She says there was a long standing relationship breakdown between her and her manager, about which nothing had been done, and about which she had raised a grievance on 23 May 2019, but that no effective action had been taken. It was unfair to dismiss her on 10 January 2020 for a brief minor matter that had happened on 29 April 2019, many months after the investigation report

[1] Page 192

was completed (on 20 May 2020), and after no issue had arisen after 29 April 2019.

Evidence

3. I heard oral evidence from Ms Sabia, and for the Respondent from James Wilkinson (who dismissed Ms Sabia) and from Karl Winstanley (who heard her appeal against dismissal).

4. The Respondent provided an agreed substantial bundle of documents.

Law

5. The reason put forward is conduct, which is a potentially fair reason for dismissal.[2] Was that the reason? If yes, did the Respondent have a genuine belief on reasonable grounds of misconduct by the Claimant? If yes, was it misconduct justifying summary dismissal? (No notice period was paid.) Was dismissal within the range of responses of a reasonable employer? Was the dismissal procedurally fair? If not what were the chances of dismissal if there had been a fair procedure? If there was an unfair dismissal did the Claimant cause or contribute to her dismissal by her conduct?

6. The decision whether a dismissal is fair or unfair involves findings of fact about what the employer did (the burden of proof, on the balance of probabilities, being on the employer), and an assessment of whether it was fair or unfair (where there is no burden or standard of proof). Findings of fact about contributory conduct are findings of fact, on the balance of probabilities, about what the Claimant did, or did not do.

7. In deciding fairness Section 98 (4) of the Employment Rights Act 1996 ("the Act") provides

> *"…. 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"*.

There is no burden of proof, for it is an assessment of the fairness of the actions of the employer. It is not for the Tribunal to substitute its own view for that of the employer. The test in *Burchell* (reference below) is whether the employer had a genuine belief in misconduct on reasonable grounds, after proper investigation.

8. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures ("the ACAS Code").

[2] S98(2)(b) Employment Rights Act 1996

9. Compensation for unfair dismissal is dealt with in sections 118 to 126 inclusive of the Act. Potential reductions to the basic award are dealt with in section 122. Section 122(2) provides:

> *"Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce the amount accordingly."*

10. The compensatory award is dealt with in section 123. Under section 123(1):

> *"the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer"*.

11. Potential reductions to the compensatory award are dealt with in section 123. Section 123(6) provides:

> *"where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."*

12. There is provision for increase in compensation of up to 25% if the Acas Code is not followed by an employer which unfairly dismisses an employee.

13. If the claim is successful, the Judge must set out the remedies for unfair dismissal of reinstatement or re-engagement, and ask the Claimant if he wishes to seek such an order.[3] The primary remedy is an order for reinstatement or re-engagement.[4]

14. I have considered the cases of Post Office v Foley, HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] IRLR 827 CA; British Home Stores Limited v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Sarkar v West London Mental Health NHS Trust [2010] IRLR 508 CA; Sainsburys Supermarkets Ltd. v Hitt [2002] EWCA Civ 1588; Software 2000 Ltd v. Andrews & Ors [2007] UKEAT 0533_06_2601; and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. The range of responses of the employer is not infinitely wide but is subject to S98(4): Newbound v Thames Water Utilities [2015] EWCA Civ 677, paragraph 61. It is unfair to dismiss automatically by reason of gross misconduct: Department for Work and Pensions v Mughal (Unfair Dismissal: Reasonableness of dismissal) [2016] UKEAT 0343_15_1406. I have considered the guidance in Software 2000 Ltd v. Andrews & Ors [2007] UKEAT 0533_06_2601 about remedy.

[3] Sections 112-115 Employment Rights Act 1996.
[4] S116 Employment Rights Act 1996

The Respondent's policies

15. The Respondent has a disciplinary policy[5] and a grievance procedure[6]. These are sensible documents and the procedures were followed. The details of them do not need to feature in this judgment.

Submissions

Respondent

16. Mr Singh provided a cogent, lucid and succinct analysis of the Respondent's position, which can be read by a higher Court if required. The *Burchell* test was met, the procedure was fair, it was reasonable to conclude that it was gross misconduct, and dismissal was within the range of responses of the reasonable employer.

Claimant

17. Mr Omope stressed that this was a relatively small issue many months before the dismissal, with the most serious sanction of a gross misconduct dismissal, when there had been no issue since 29 April 2019. It was not gross misconduct at all. It was viewed in isolation, not in context. The sensible report into the grievance had not been considered at all. I made a detailed typed note of his submissions, which can be read by a higher Court if required.

Findings of fact

18. Ms Sabia and her manager had a fraught relationship. Mr Turner concluded, in his report dated 20 November 2019 into Ms Sabia's grievance of 22 May 2019, that both were responsible for that, probably Ms Sabia more than her manager. There is no reason to doubt that this was a genuine conclusion, and it is a well written report, after considerable care had been taken (this is apparent from the report and the notes of interviews undertaken). There is no evidence which could lead me to a different conclusion, and I adopt that report as findings of fact: on the balance of probabilities Mr Turner was correct.

19. Before 29 April 2019 there was a background fractiousness in relationships, and Ms Sabia was unhappy that (she said) nothing was done about it by management. The rights and wrongs of this are not germane to my judgment, but the situation was relevant background. Ms Sabia had filed a grievance about this in 2017[7]. It had been suggested that there be a workplace mediation meeting between Ms Sabia and her manager, but although her manager had agreed to participate[8] matters then drifted for months, until ultimately[9] it became clear that the manager declined to participate[10], following which nothing was done about the underlying issue.

[5] Page 43 onwards
[6] Page 55 onwards
[7] Referred to at page 139
[8] 03 November 2017 - page 118
[9] by 14 June 2018 – page 129
[10] The mediator stated as much in an interview about the grievance, held on 26 July 2019 (page) 161

20. On 29 April 2019 there was a meeting at which Ms Sabia, her manager, several colleagues, and an external nurse (and 2 trainees brought by that nurse) were present. Ms Sabia became exercised by some aspect of the meeting, and voices became raised – not just hers. The nurse and her students left. Then her manager left. Ms Sabia berated her colleagues, and they responded. Ms Sabia gesticulated to the extent of poking one of them in the arm. There is no reason for the people interviewed to have made this up. However this was something and nothing, and not a serious incident.

21. On 16 May 2019 Ms Sabia was told there would be an investigation into the incident 2½ weeks before, on 29 April 2019, and on 22 May 2019 she was interviewed about it.

22. On 20 May 2019 the team manager Tracey Collins prepared a report[11], which recommended disciplinary action, as there was evidence that *"Lucy acted inappropriately during the meeting [of 29 April 2019] throughout by waving her arms, shouting at members of staff, slamming her book on the table and physically poking Charlene."* That evidence was Charlene saying *"Lucy kept really poking me in the arm, I said Lucy stop, stop touching me I don't like it…"* and a colleague of both *"At this point she [Ms Sabia] was poking Charlene in the arm as she was talking, Charlene said Lucy stop touching me I don't like it. Lucy carried on talking and carried on poking"* and another colleague *"Lucy poked Charlene in her arm and Charlene told her to stop touching her and that she did not like".*

23. On 23 May 2019 Ms Sabia lodged a grievance, against her manager's manager, for failing to get matters resolved: her view was that if the manager would not attend a meeting to discuss their relationship, it was necessary to draw this to the attention of the next manager in the hierarchy[12].

24. The investigation resulted in interviews with various colleagues. It seemed that Ms Sabia was regarded as a person who knew her own mind, and was not as receptive to the views of others as she expected them to be of hers and that (for the same reason) her manager tended not to challenge her (this is a paraphrase)[13].

25. Ms Sabia's manager was also interviewed[14]. The notes are as follows (questioner in italics)[15]:

> *"You agreed to a work relationship meeting (following an incident on the 29 April 19). What was the outcome of this meeting? Have the outcomes been implemented?*
>
> Following this incident and having seen Lucy's reaction, I agreed to attend a work relationship meeting to deal with and sort out the issue.

[11] 190 onwards
[12] Page 139: Ms Fonteneau's notes of meeting of 14 June 2019
[13] For example page 149, 153 & 158
[14] Her name does not feature in this decision, as judgments are public documents. The manager was not a witness, and it would be unfair to set out statements of others which she has no opportunity to comment upon.
[15] Page 166

During this meeting, we did not reach a consensus and so there were no outcomes.

Why did you agree to this but not to mediation?

As I already stated above, in April 2018, I was unaware of any conflicts between Lucy and I and did not see why I should attend a mediation meeting. However, as you already stated above, there was an incident in April 2019 and from Lucy's outburst, it was obvious that she has some issues with me as a person as I am unaware of any issues with my line management relationship with her. When invited by Hinatea / HR for the work relationship meeting, I immediately agreed as I wanted to know what these issues were, and I was keen on them being resolved and sorted as soon as possible. Moreover, the incident happened in a team meeting and I was very eager to get it resolved as soon as possible to put the incident behind me and get the team working together again as we always have done.

How effective would you say your management of Lucy has been?

I would say that I have managed Lucy as effectively and professionally as possible. I have been supportive and helpful and provided every assistance within my power to ensure that Lucy feels supported and is able to discharge her duties effectively.

Is the relationship workable long term?

As far as I am concerned, there will always be conflicts in the workplace as no two persons are alike even if they are from the same backgrounds. It is my opinion that as members of staff, we endeavour to be as professional as required by the business.

Apart from the blow-up incident in April 2019, I am unaware of any other issues apart from those which have been raised in this document viz:

- - My not agreeing to attend mediation in April 2018
- - Her opinion that I ignore her and am 'passive and distant' towards her
- - Her statement that when asked, I respond that 'I do not know anything – I still will

  like more clarification regarding this
- - Her inference that I may have given the other members of the team any direction

  about how to work with or interact with her
- - Her opinion that I treat her differently to other team members and interact differently

  with her
- - Her accusation that it takes long to meet 'her' needs (as from the question it does

  seem to be that it has already been agreed that I have singled Lucy out and decided

  to take long to meet her needs)

- - My reasons for agreeing to a work relationship meeting after the incidence in April

  this year and not a mediation meeting a year earlier (April 2018)

- - My effectiveness as a team leader

With regards to these issues, I want to believe that my answers above do give clarity to my intents and work relationship with Lucy. I am amazed that Lucy did not raise these issues with me herself as I would have had no problems clarifying them with her.

As I stated at the beginning, I have been Lucy's team leader for some time now and apart from Lucy, I do have other employees that I supervise. In my years of supervising staff, I have been an engaging and supportive team leader, taking the opinions and suggestions of the team into consideration in making decisions as well as being mindful of their mental health and well-being. I want to believe that members of my team would have been questioned as well as to my line management skills and whether they feel I am a good team leader. I have also worked closely with my line manager / HR asking questions where necessary to ensure that my team are well supported and perform to full capacity.

I do not have any problem continuing to be Lucy's team leader, however, I would ask that Following the incident in April 2019, Lucy be told to refrain from such unprofessional outbursts in the future as they do not augur well for the team.

What, if anything, would you do differently?

Seeing that Lucy must have had all these issues and did not discuss any of them with me as her team leader, I would be more open in my approach and ask her regularly if support is required, what support is required and what she feels I can do to provide such support. I also will communicate more with HR and my line manager to seek further support and guidance should I find myself unable to provide the support required."

26. She also stated *"I do not have any problem continuing to be Lucy's team leader…"* with the caveat that unprofessional outbursts should be curbed[16].

27. The grievance outcome was not until 09 October 2019[17]. The appeal was on 11 November 2019 and the letter dismissing it from Mike Turner was dated 21 November 2019[18]. This agreed that there were reasons from both as to why Ms Sabia's relationship with her manager had not been harmonious. In short, Ms Sabia could be challenging to manage, that her manager's passivity in approach did not deal with issues that arose so that they worsened, but that the primary responsibility for that problem lay with Ms Sabia so that the grievance was not upheld.

28. The letter (very sensibly) concluded that the original recommendation that there should be a meeting to consider redeployment (and I conclude because the problems were a result of their characters which were not going to change) should be held as soon as possible.

[16] Page 169
[17] Page 170
[18] Page 187

29. On 13 December 2019 James Wilkinson (Head of Stations) wrote[19] to Ms Sabia, requiring her to come to a disciplinary hearing on 07 January 2020. He stated that the allegation was:

> *"On the 29th April 2019, at a Community Ambassador meeting you acted inappropriately by waving your arms, shouting at members of staff, slamming your books and physically poking a member of staff."*
>
> And
>
> *"This is in breach of the company procedure, procedure SOP-M 1.02 General Conduct Rules:*
> *4.5.2 All Staff must not:*
> *Use offensive or indecent language or behaviour or commit any assault."*
>
> He also wrote:
>
> *"There are some other alleged points which we also discuss at the meeting, which are:*
>
> *• That during the investigation process you have been untruthful"*

30. At that meeting, Ms Sabia challenged the assertion that she had been untruthful, just that she was giving her account of what happened, no more and no less. Mr Wilkinson did not set out in what way, or when or to whom, it was alleged that Ms Sabia had been untruthful, for he simply invited Ms Sabia to *"Please go through in your own words the day in question and your thoughts on it."*[20]

31. By letter dated 13 January 2020[21] Mr Wilkinson summarily dismissed Ms Sabia. He stated that she had poked a colleague and that her actions were physical assault and violent or indecent behaviour, and so gross misconduct within the disciplinary procedure. He stated that notwithstanding her 5 years' service and good record the sanction was dismissal because she refused to take any responsibility or acknowledge any fault.

32. On 20 January 2020 Ms Sabia, through her solicitor, appealed[22]. She sent in a detailed document[23] setting out the context, going back to 2017, which she said (correctly) had not been considered by Mr Wilkinson, and referring also to the grievance documentation.

33. On 04 February 2020 Mr Winstanley asked her to a meeting on 11 February 2020, and that meeting duly occurred. Mr Winstanley also considered other matters not relevant to the dismissal, although Ms Sabia was insistent that this was a culmination from the last few years[24]. After adjourning for about an hour he upheld the dismissal. He wrote to confirm this the next day,

[19] Page 234/235
[20] Page 238
[21] Page 254-256
[22] Page 258
[23] Page 260 onwards
[24] At page 268

12 February 2020[25]. He did not think the delay relevant, because of the grievance. He considered the process fair throughout.

Conclusions

34. Both Mr Wilkinson and Mr Winstanley were suitable people to take the disciplinary and appeal meetings. They were at suitable levels in the organisation and had no prior involvement.

35. The reason for dismissal was misconduct. There was no other reason. That is a potentially fair reason for dismissing someone.

36. Both decision makers genuinely believed that Ms Sabia had got angry and poked a colleague at a meeting on 29 April 2019. There was a thorough investigation and they had reasonable grounds for that belief. That is, they satisfy the *Burchell* test of genuine belief of what happened, on reasonable grounds and after proper investigation.

37. The procedure was also a fair procedure: Ms Sabia had the right to be accompanied. She knew what the allegation was, and was provided with notes of hearings and of interviews with those whose evidence was considered. The test in Sainsbury's v Hitt is met.

38. However, the sanction was plainly unfair. It is trite law that a judge is not to substitute his own view for that of the employer. That is not what this decision does. The sanction was outwith the range of responses of the reasonable employer (Iceland Frozen Foods v Jones) because:

> 38.1. It was not gross misconduct. The sections of the disciplinary code set out in full above are aimed at something much worse than poking a colleague in the arm to emphasise a point, of such little importance to those at the meeting that it was not raised until the investigator asked the colleagues what had happened at the meeting. In summary, that allegation was elicited from the colleagues by the investigator rather than raised by them as a complaint. That has to be relevant to how seriously, or otherwise, they regarded it at the time. Nor was it sufficiently bad to justify dismissal on notice.
>
> 38.2. Both Mr Wilkinson and Mr Winstanley regarded dismissal as inevitable once they had categorised it as gross misconduct – Mr Wilkinson felt that not to dismiss would *"condone"* violent conduct. To describe this as violence overstates it. But that is not the point: it is not *"condoning"* anything to impose a sanction less than dismissal. It is to exercise proportionality of response, which is what is required of the decision maker.
>
> 38.3. Neither of them considered context relevant. It is relevant to sanction that matters with Ms Sabia's manager had been simmering since 2017, and that this was a contributory factor relevant to the meeting on 29 April 2019 going off the rails.

[25] Page 276-277

38.4. The time line is important in this case. There was an incident on 29 April 2019. It was not so important that an investigation was required immediately, and nor was Ms Sabia suspended (as might have been anticipated where the dismissal was for alleged gross misconduct at that meeting and where Ms Sabia was continuing to work for the same manager and with the same colleagues). The report recommending disciplinary action was 20 May 2019. That was because the allegation of poking was not raised at the time with Ms Fonteneau (who did the preliminary work), and not until a couple of weeks later when Ms Collins interviewed the others at the meeting.

38.5. Subsequent matters were not considered, and plainly they had relevance to what sanction should have been imposed, if any.

38.6. Mr Wilkinson's decision was partly influenced by his view that *"potentially"* Ms Sabia had misled him. That was not a proper consideration. Either she did, and he should have put the reasons why he thought so, or she did not, on the balance of probabilities. He could not have found that she did mislead him (or the investigator), and that affects the assessment of his decision. Mr Winstanley did not consider the point and he should have done. In his defence this was not a point raised by Ms Sabia at the time. The task of both Mr Wilkinson and of Mr Winstanley was not easy, because Ms Sabia was very exercised (understandably) by what she (rightly) regarded as the unfairness of being dismissed and was less than entirely logical at the meetings, as comes across from the notes. However, there was no more than a divergence of account at a meeting where tempers frayed. That is the extent of what happened during the entirely of the meeting of 29 April 2019, and that is all that the decision makers could and should have made of it.

39. In cross examination, it was put to Ms Sabia that in the disciplinary hearing she had said[26] that she was guilty and it did not look good for her, which was an admission that meant that her dismissal was fair. In fact, the entry made by the notetaker was vague, as at this point she appears to have had difficulty keeping up. It reads *"???? here as guilty. It doesn't look good for me. But the situation where Lynsey and Charlene allowed to things, it's not fair and I've got the emails. I say to [manager] it has got to stop and I can bypass a reaction but with people who do not know me, I can't tolerate that. That was an explosion, you don't do, if you want to be a manager then be a manager but not at my expense."* This is far from clear as to its meaning, either as recorded or (probably) as spoken. It does not justify summary dismissal for gross misconduct.

40. There are further reasons why the dismissal was unfair, even if it had been gross misconduct (and for the avoidance of doubt I find that it was not).

41. The time line is important. The investigation was not started until 16 May 2019. A grievance was lodged on 23 May 2019. That (subsequent) grievance stopped the disciplinary process (although why is not apparent to me, as the grievance was interconnected with the matter said to be misconduct). The grievance outcome was not until 09 October 2019 – 4½ months later. Then the

[26] Page 244

appeal against that outcome was sent on 20 November 2019.

42. In the meeting on 07 January 2020 Ms Sabia denied poking anyone on 29 April 2019[27]. Mr Wilkinson's view, clearly set out in his oral evidence, was that it was simply unacceptable to poke a colleague and as not only had the colleague complained of it, 2 others said they saw it, and he believed it had occurred. He felt that it was gross misconduct to do that, and so he dismissed Ms Sabia. He also felt that potentially Ms Sabia had misled him, and was not remorseful about her actions on that day.

43. Mr Winstanley's oral evidence was that it was gross misconduct to shout at and poke a colleague, and that while he considered a lesser sanction he could not condone such behaviour. It was not relevant that her manager was content to have her as a member of her team. It was not sufficient mitigation that the next 8½ months had been uneventful. The previous history of difficulty with her manager he did not think relevant. For him it was all about the meeting on 29 April 2019.

44. This fails to take any account of the facts (which are not in dispute) that:

44.1. For 8½ months since 29 April 2019 Ms Sabia and her colleagues had worked together with no issue arising.

44.2. For 4 months or so after 29 April 2019, Ms Sabia's manager had worked with her with no problem.

44.3. Ms Sabia's manager had no issue continuing to be her manager (if she were not redeployed).

44.4. The colleagues had not made complaint about any poking at the time and did so only when asked about an argument at that meeting.

45. Viewed objectively, in these circumstances it was not fair to dismiss Ms Sabia.

46. Put in terms of the legal test, the decision to dismiss Ms Sabia was not within the range of responses of the reasonable employer. That band has limitations (*Newbound*) and this was outside those limitations, and so fails the test in S98(4) of the Employment Rights Act 1996. It was not gross misconduct and even if it had been it was not fair automatically to dismiss Ms Sabia, which was what was occurred.

Remedy

47. *Polkey*: I do not consider that there should be any reduction under this head. The procedure itself was not unfair. It was the decision itself which was the unfair dismissal.

48. The procedure was not in breach of the ACAS code and so there is no increase in any compensatory award for that reason.

[27] Page 248

49. Ms Sabia plainly did over-react at the meeting of 29 April 2019, and she is not without fault. The person conducting the grievance thought Ms Sabia was more responsible for the breakdown in the working relationship than her manager[28]. The matters for which Ms Sabia was dismissed largely related to her colleagues not her manager. Even if Ms Sabia was more responsible for the difficulties in her relationship with her manager that was no reason to dismiss her, and that report recommended looking at relocation. Overall, I assess contribution arising from her behaviour at the meeting on 29 April 2019 at 20%.

50. Ms Sabia has not been able to work since her dismissal, for health reasons. Therefore, her loss of earnings attributable to her dismissal is low. However, she should have received notice pay of 5 weeks' pay (not subject to reduction of 20%, as it is a contractual entitlement). She might also have been entitled to sick pay had she remained.

51. The primary remedy for unfair dismissal is reinstatement or re-engagement[29]. I explained to Ms Sabia that such an Order could be made, and that if such an Order was not made then the Order would be for compensation, necessarily somewhat limited because of her inability to work after her dismissal (and even if the dismissal caused the illness which prevents her from working[30]). Ms Sabia was not aware of the possibility of reinstatement or re-engagement.

52. I consider that there is no relationship reason why a reinstatement of re-engagement order cannot be made. Ms Sabia worked with the same colleagues from 29 April 2019 until dismissed nearly 9 months later. She worked under the same manager until that manager went off sick herself in August, still over 3 months. No issue arose. Nor (in November 2019) did Ms Sabia's manager have any objection to continuing to manage her. The interview (set out at length above) does not show any relationship reason precluding Ms Sabia's return to the Respondent. In the November 2019 grievance outcome decision redeployment was recommended. Should there be any issue with Ms Sabia returning to her previous role (which might depend upon whether her previous manager has returned to the same post) then redeployment on reinstatement is, plainly, possible. Ms Sabia expressed interest in redeployment[31] before she was dismissed, and as it was a recommendation by Mr Turner who looked into Ms Sabia's grievance it was possible. The Respondent employs 500 people and is geographically spread.

53. I do not consider that a finding of 20% contribution precludes an order for reinstatement or reengagement.

54. As the hearing was listed for only 1 day, and was completed with an extempore judgment, and because Ms Sabia and her advocate were not in the same place (it being a virtual hearing), coupled with the Respondent seeking these full written reasons, it was not possible to decide upon remedy on the day of the hearing.

---

[28] Page 187, report dated 21 November 2019 by Mike Turner
[29] S112 Employment Rights Act 1996
[30] Johnson v. Unisys Limited [2001] UKHL 13
[31] Page 183, interview with Mike Turner 11 November 2019

55. I decided that within 14 days of this decision being promulgated Ms Sabia should notify the Tribunal and the Respondent whether she seeks an order for reinstatement or reengagement. A hearing date will be set. The parties should send written submissions as to remedy (bearing in mind the text of this judgment) no later than 14 days before the remedy hearing.

Employment Judge Housego
Date 03 February 2021