EMPLOYMENT TRIBUNALS

Claimant: **Mrs V Bramble**

Respondents: **Birch Tree Northern Limited**

Heard at: **Newcastle CFCTC by CVP** **On: 28 February 2022, 1 & 2 March 2022**

Before: **Employment Judge Arullendran**

Representation:

Claimant: **Miss J McDermott (family member)**
Respondents: **Mr P Sangha (counsel)**

RESERVED JUDGMENT ON LIABILITY

The Judgment of the Employment Tribunal is as follows:

1. The Claimant's claim of unfair dismissal pursuant to section 98 of the Employment Rights Act 1996 is well-founded and succeeds.
2. The Claimant's claim for holiday pay pursuant to Regulation 14 of the Working Time Regulations 1998 is well-founded and succeeds.
3. The Claimant's claim of unauthorised deduction of wages pursuant to section 13 of the Employment Rights Act 1996 is well-founded and succeeds.

REASONS

1. The Claimant brought a claim of unfair dismissal, holiday pay and arrears of pay against the Respondent on 17 February 2021. The Claimant's claim is that she was dismissed by the Respondent on the grounds of false allegations made by the managing director as a result of an unrelated commercial dispute.

2. The Respondent resists all the claims brought by the Claimant and has argued that the Claimant was dismissed for reasons of misconduct for claiming wages that she was not entitled to and that her dismissal was fair on the grounds of fraud. The Respondent stated in the ET3 that it denied the Claimant was owed any outstanding wages but has not pleaded a specific defence to the claim of holiday pay.

The hearing

3. The issues to be determined by the Employment Tribunal were agreed between the parties on the first day of the hearing and set out in a document produced by Respondent's counsel as follows:

"UNFAIR DISMISSAL

1. What was the reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) ERA 1996?
2. The Respondent asserts that the reason for dismissal was a conduct reason.
3. If so, was the dismissal fair or unfair in accordance with s.98(4) ERA 1996, and, in particular, did the Respondent in all respects act within the so-called 'band of reasonable responses'? (Burchell issues)

Unfair dismissal remedy

4. If the Claimant was unfairly dismissed and the remedy is compensation:
    a. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would still have been dismissed had a fair and reasonable procedure been followed/have been dismissed in time anyway?
    b. Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to s.122(2) ERA 1996; and if so to what extent?
    c. Did the Claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion? if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to s.123(6) ERA 1996?
    d. Was there a breach of the ACAS Code? Should the compensation be adjusted?
        i. R says C failed to pursue her appeal to an appeal hearing;
        ii. C says: that he the disciplinary hearing on 02.09.2020 was not conducted fairly in that it was adjourned and not reconvened. C asserts that there was a failure to hold a disciplinary hearing and so C was not able to defend herself at the hearing.

UNPAID WAGES

5. Is the Claimant owed any unpaid wages for May 2020?

6. The Claimant asserts that she is owed wages for hours worked but not paid during furlough in May 2020 being 66.5 hours for the month May 2020.

HOLIDAY PAY

7. What was the R's leave year?
8. Was there a "carry-over" provision in respect of holidays untaken in one holiday year into another holiday year?
9. Has the Claimant received outstanding holiday pay upon termination of her employment?
10. If not, what amount is due?"

4. I heard witness evidence from the Claimant, Mr Shane Murray (the investigating officer), Mr Paul Cowan (the disciplining officer), Mr Russell Toward (the decision-maker), Mrs Helen McDougall (the appeal officer) and Mr Brian Chick (the managing director).

5. I was provided with a joint bundle of documents consisting of 324 pages. All the page numbers in this judgement refer to pages from that bundle.

6. The Claimant was represented by a family member with a human resources background, but without experience of Tribunal hearings. I explained the process to the parties and advised the Claimant's representative that she could ask the Tribunal to provide her with assistance with the Tribunal process, but I could not run her case for her. I explained that the witness statements would be taken as read and witnesses would not have permission to add further evidence in chief without seeking permission from the Tribunal, that any matter not challenged in cross examination would be taken to have been accepted by the other side and that I would only read the documents in the hearing bundle which I was referred to during evidence.

7. The Respondent's witnesses were advised of their right not to incriminate themselves in a potentially criminal matter when giving evidence in this Tribunal about the alleged fraudulent claims for the furlough grant and that they had the right to remain silent.

8. The Claimant made oral submissions which I have noted in the record of proceedings in their entirety, however those submissions are not reproduced in full in this Judgement. The Respondent made closing submissions by reference to a very detailed skeleton argument, the contents of which I have taken into account in its entirety, although it is not reproduced in this Judgement in full.

9. I explained to the parties that I would make findings of fact on the balance of probabilities and, where there is a dispute between the two sides, I would make my findings of fact based upon the oral and documentary evidence, weighing up all the evidence in the round and deciding which version of events was more probable in the circumstances. Sometimes this is a fine balancing exercise, judging the evidence to support one side rather than the other, on the basis of 51% as against 49%.

The facts

10. The Claimant began her employment with the Respondent on 1 January 2011 and was employed as a part-time payroll and accounts administrator.

11. The Respondent is a small business operating in the construction industry specialising in commercial roofing and building work. The Respondent does not have a dedicated human resources practitioner, however the Respondent had the assistance of a solicitor throughout the internal investigation, disciplinary and appeal process relevant to this case. It is common ground that the Claimant, Mr Chick and Mr Toward all regarded each other as close friends as well as colleagues and have known each other for over 10 years.

12. The Claimant initially worked for the Respondent 2 days per week and, in or around 2014, she increased her hours of work to 3 days per week. The Respondent has 5 desks available in its office and 2 of them are equipped with computers with access to the payroll information/Sage accounting software. The Claimant worked on Mondays and Wednesdays every week and, when she was not in work, her desk would be used by Ms Walton who worked 3 days per week. The Claimant had flexibility in choosing which day she would attend the office in respect of her 3rd working day and she would arrange her work so that she could either use the computer on the desk shared by her and Ms Walton or the computer on Mr Chick's desk, which also had access to the Sage software.

13. In or around August 2019, the Respondent employed an office manager, but he was only employed for a few weeks before he left. The role was filled by another employee between November 2019 and May 2020. The Respondent's evidence is that the Claimant worked 2 days per week after the office manager had been appointed because there was insufficient desk space for her to work 3 days each week. The Claimant's evidence is that she continued working 3 days per week as her duties were different to those of the office manager and that she only worked 2 days per week after she returned from furlough in or around the end of June 2020. In questions asked by this Tribunal, the managing director said that he did not have any conversations with the Claimant about reducing her hours of work when the office manager was appointed and he was unable to give any evidence about an agreement that the Claimant would reduce her working days to 2 days per week. In the circumstances, I prefer the Claimant's evidence that she continued working 3 days per week on a regular basis up until the end of March 2020 when the first national lockdown during the Covid-19 pandemic was announced.

14. The Coronavirus Jobs Retention Scheme ('the scheme') was announced by the Chancellor of Exchequer in March 2020. The scheme was to provide support for employers to enable them to continue the employment of their employees by paying part of their employees' salaries rather than lay them off. The original version of the scheme ran until 30 June 2020, however the Chancellor then extended the scheme to run until the end of October 2020. The scheme which ran from 1 July 2020 introduced 'flexible furlough' to help employees back into work with employers contributing towards the cost of their furloughed employee's salaries to replace part of the contribution made by the

Government. Under the scheme, for each month that an employee was furloughed, the employer paid the employee the lower of, either 80% of the employee's regular wage or £2,500. The employer could, but was not obliged, to pay the employee their full wage. From 1 July 2020 the flexible furlough scheme allowed employees to be brought back to work, with their agreement, for any pattern of part-time working. The employees were paid their usual wages for hours worked while remaining eligible for the scheme for any of their normal hours not worked. Prior to 1 July 2020, employers were not permitted to ask furloughed employees to carry out any work at all.

15. The Claimant was placed on furlough at the end of March 2020 during the first national lockdown. It is common ground that the Claimant received 80% of her normal wages during April and May 2020. The Claimant did not attend work in April, however she was asked by the Respondent to attend work for three weeks in May 2020 when she carried out her payroll functions. However, the Claimant only received 80% of her wages even though she was carrying out her normal duties. The Claimant has claimed 66.5 hours overtime in respect of the work she carried out in May 2020. She accepted questions put by this Tribunal that what she was really claiming was the remaining 20% of her wages as she had already received 80% of her normal pay, however in re-examination the Claimant changed her evidence again and said that she is claiming for overtime.

16. It is common ground that the Claimant, Ms Walton and the office administrator were the only hourly paid employees within the Respondent company. All other employees were paid a salary. It is also common ground that the Respondent company did not have a process in place for recording or monitoring the number of hours the hourly paid employees worked or claimed in respect of their wages. The Claimant recorded her hours of work in an office diary which was kept either on her desk or in the desk drawer. Mr Chick knew the Claimant recorded her hours of work in the office diary and he knew that it was kept in her desk drawer. There was no requirement for the Claimant to complete timesheets.

17. It is common ground that the Claimant operated the Respondent's payroll and that she completed the payroll information on Wednesdays each week so that the employees could be paid on the Friday of that week. The payroll information was kept in a filing cabinet in the office to which Mr Chick had access at all times. The Claimant sent an email copy of the salary and wages information to Mr Chick each Wednesday in advance of the payments being made.

18. The Claimant coordinated her holidays with Ms Walton and the office manager and these were recorded on a wall planner which was kept in the Respondent's office. It is common ground that there was no process which had to be followed by the Claimant in respect of requesting holidays from the managing director, or any other manager within the organisation. The Claimant's evidence is that she was allowed to carry over 5 days holidays from the previous holiday year (which starts on 1 January each year) the Claimant relies on an extract from the Respondent's handbook (page 324), the second page of which (which this Tribunal does not have a copy of) is said to state that a written agreement is required between the parties for holidays to be carried over into the

following year, however the Claimant accepted that there was no written agreement and her evidence is that there was a verbal agreement that she could carry over 5 days holiday. The Respondent's evidence is that there was no agreement for the Claimant to carry over any holiday at the end of 2019. I prefer the evidence of the Respondent given that the parties agree that the provision in the handbook requires a written agreement before holidays can be carried over into the following holiday year and, in the absence of such, it is more probable than not that no such agreement existed in respect of the 5 days claimed by the Claimant.

19. The Claimant received 17 days holiday each year on a pro rata basis, including bank holidays. The Claimant holiday year ran from 1 January each year. The Claimant accepted in cross-examination that she received payment for one day's holiday in respect of the bank holiday in August 2020. It is common ground that the Respondent did not pay to the Claimant her accrued and outstanding holiday entitlement when her employment came to an end.

20. It is common ground that the Respondent company agreed to carry out some building work for the Claimant and her husband in April 2019. It was agreed between the parties that the Respondent would liaise with the Claimant's husband in respect of the building works, rather than the Claimant herself as she was employed by the Respondent and wanted to keep the commercial relationship and employment relationship separate.

21. A dispute arose between the parties in respect of the building work in July 2020. On 22 July 2020 the Claimant's husband sent an email to the Respondent (page 37) refusing to pay any further money to the Respondent company in respect of the disputed building work. This email was sent at 8:39 AM. Following this email, at 1:19 PM, the managing director's wife, who is also the company secretary, left a voicemail message on the Claimant's husband's telephone, a transcript of which can be seen at page 36. The latter part of the message states *"you have now put my husband business at risk along with your wife's job and another 30 employees, be very proud of yourself and I'm so disappointed in you as a friend."*

22. Shortly after leaving the voicemail message for the Claimant's husband, Mrs Chick came to the Respondent's office and spoke to the Claimant about her husband's email. The discussion was unpleasant. Mrs Chick told the Claimant that she was putting her job at risk as a result of the refusal to make further payments in respect of the building work. The Claimant continued with her work the rest of that day, despite the atmosphere created by Mrs Chick, and she completed the payroll in readiness for all the employees to be paid on Friday at the end of that week. Nothing further was said by the Respondent to the Claimant about the argument between Mrs Chick, the Claimant and her husband. The Claimant was not due to return to work until the following Monday, 27 July 2020.

23. After having a discussion with his wife about the argument between her and the Claimant and her husband, Mr Chick decided to contact his accountant and ask them whether they would be able to provide a payroll service. He also requested the historic payroll information for the Claimant and Ms Walton dating back to 2013 ostensibly to find out

how the hourly paid employees were paid. Mr Chick's evidence is that he asked the accountant for this information because he was concerned the Claimant might leave her employment with the Respondent. I do not accept this as a truthful account of the reasons why the Respondent asked the accountant to provide information about the Claimant's claims for wages dating back to 2013. In questions asked by the Tribunal, Mr Chick said that the Claimant had not indicated that she was thinking about leaving her employment and he had no reason to believe that she would leave, other than his assertion that the argument with his wife about the disputed payments for the building work might have led the Claimant to decide to resign. The Claimant's evidence is that she loved her work, that she had enjoyed working for the Respondent for over 10 years and had no intention of leaving. The evidence from Mr Toward is that the Claimant was very efficient at her job and that they were all friends. In the circumstances, I prefer the evidence of the Claimant that she had no intention of resigning and she had given no reason whatsoever to Mr Chick to think that she might resign. The Claimant had already completed the payroll information that week and there was no reason for Mr Chick be concerned that the wages might not be paid on the Friday. Further, the Respondent has not explained why it needed details about the Claimant wages going back to 2013 in order for the accountant to provide payroll services going forward. What is more probable is that, as the parties were in dispute about the commercial contract, this was the reason why Mr Chick decided he would look at the information available to him about the Claimant's employment, perhaps even with a view to dismissing her, particularly given that Mrs Chick had alluded on 2 occasions to the Claimant putting her job at risk approximately a day, or so, before Mr Chick started looking into the Claimant's wages.

24. On Friday, 24 July 2020, at around 5:15 PM, the Claimant received an email from the Respondent suspending her from her employment and inviting her to an investigatory hearing on 29 July 2020 in relation to fraudulent practice, i.e. claiming for hours not worked (page 38). It is common ground that the letter states *"you can bring a colleague or friend to this meeting*".

25. The investigation was carried out by Mr Murray who was employed by the Respondent as a contracts manager at the time, but no longer works for them. Mr Murray's evidence is that he was asked by Mr Chick to undertake an investigation into allegations of over claiming wages and holiday entitlement, however the invitation suspension letter referred to an investigation into claiming for hours not worked and there is no reference to holiday entitlement, as can be seen in the letter at page 38 of the bundle. Mr Murray's evidence is that he was given a copy of the Claimant's 2020 diary and a pay analysis compiled by the Respondent's accountants providing the Claimant's wages from 30 April 2013 to 30 June 2020 (pages 81 to 84). It is common ground that the Claimant was not provided with a copy of her 2020 diary throughout the investigation or disciplinary hearing and she was told that the 2019 diary was not available. The Claimant's uncontested evidence is that the 2019 diary was in her desk drawer and she had seen it during her last week at work before she was suspended. The Respondent's evidence is that the diary was not where the Claimant said it was kept, but no satisfactory explanation has been provided for the diary being missing. It has not been suggested by the Respondent that the Claimant had taken the diary away from the office. Therefore, the evidence relating to

the Claimant's days and hours of work in 2019 did not form part of the investigation carried out by Mr Murray.

26. The Claimant made a request for various documents to be provided to her on 27 July 2020 (pages 40 and 41). Part of the documents requested formed a subject access request and included copies of emails between the Claimant and Mr Chick from 1 January 2019 to 24 July 2020. The reason why the Claimant requested these documents was to prove the dates and hours that she was at work, particularly given that her handwritten account in the form of her 2019 diary was no longer available to either her or the Respondent. It is common ground that the Respondent refused to provide the Claimant with the emails she had requested, stating that the request was too onerous , however the Claimant was provided with a handwritten document compiled by Mr Murray setting out the dates and times of the first and last emails on the days the Claimant worked (pages 116 to 118).

27. On 27 July 2020 the Claimant raised a grievance against Mrs Chick (page 39) in respect of the way she had treated the Claimant on 22 July 2020. The grievance was heard and dismissed by Mr Murray and the grievance appeal was heard and dismissed by Mr Toward.

28. On 29 July 2020 the Claimant attended the first investigatory meeting, the minutes of which are at pages 85 to 88 of the bundle. Mr Murray told the Claimant that the allegation he was investigating was that she had made irregular payments of wages to herself "*incommensurate to the number of hours work during the period of January 2022 June 2020 excluding the months of April and May*". During this meeting, the Claimant explained to Mr Murray that she had an agreement with Mr Chick that she had 60 hours which had been banked and were to be paid at a later date with Mr Chick's agreement and that this accounted for some of the discrepancies raised by Mr Murray. The Claimant explained that she noted the banked hours in her diary and a personal notebook. It is common ground that there was an agreement between the Claimant and Mr Chick that the Claimant could bank her hours and be paid for them at a later date, but there was no formal system for recording such hours. Mr Chick confirmed in his interview with Mr Murray on 29 July 2020 that he had an agreement with the Claimant in 2019 where she could be paid at a later date for hours worked. Mr Chick estimated that the number of hours worked would be in the region of 105 over three month period. However, he said that there was no agreement for the Claimant to bank her hours between January and March 2020. I prefer the evidence of the Claimant that there was an agreement between the parties that the Claimant could bank some of her hours and claim them at a later date and that this was not confined to a period of three months in 2019, but it was a practice which the Claimant started in early 2019 and which continued into 2020, because no evidence was adduced by the Respondent that the agreement was confined to specific dates and it is more probable than not that Mr Chick would have indicated to the Claimant that he agreed for her to manage this process going forward.

29. On 10 August 2020 the Claimant attended a second investigatory interview with Mr Murray, the minutes of which are at pages 91 to 96 of the bundle. The reason for the

meeting is stated as "*During investigating interviews, an agreement, between Brian Chick and Victoria Bramble, relating to "banked hours" was disclosed. No record exists of the agreement or when hours were banked or claimed*." The Claimant asked for the month of April and May 2020 to be included in the investigation, but this was declined as there were no discrepancies with the hours worked and wages paid for those months. The Claimant also requested an electronic footprint or report from Sage to confirm the days she worked (page 99 to 108). During this meeting the Claimant provided details of the numbers of banked hours she had claimed for in 2020.

30. During the third investigatory interview, Mr Murray asked the Claimant how many holidays she accrued annually because the Claimant had stated in the second interview that she had received a lump sum payment in respect of two days holidays in September 2019. Mr Murray stated that the lump sum was not recorded as holiday pay on the Sage accounting software. The Claimant was unable to explain why this was and she was unable to explain why she had carried holidays forward in her 2020 diary because she did not have access to that diary when she was being asked questions. The Claimant was also asked about not recording a bank holiday in January 2020 and, again, the Claimant said that she did not know why that was as she did not have access to her diary and that it could have been an oversight.

31. On 24 August 2020 the Claimant attended third investigatory interview with Mr Murray (page 110 to 113). The reason for the meeting is stated to be "*In the absence of accurate records and inconsistent hours worked from week to week and month to month, further information is required to understand why the trend is so inconsistent*." The Claimant provided information to Mr Murray about her duties and how long they would ordinarily take, such as filing and archiving, in addition to the duties relating to the payroll. The Claimant was asked to explain why in July 2020 she worked an average of 7.4 hours for 11 days and in December she worked for an average of 10.1 hours for 9 days. The Claimant explained that between October 2019 February 2020 she started work at 7:30 AM because she was travelling to work with her husband, which accounts for the extra hours worked in December. The Claimant said in this meeting that she worked three days per week and only reduced to 2 days after further came to an end, but that she expected to increase their hours to 3 days a week in or around August 2020.

32. During the third investigatory interview, Mr Murray asked the Claimant about work she had undertaken whilst being on furlough. It is common ground that Mr Chick asked the Claimant to complete the payroll whilst she was on furlough and she did this on three occasions in May 2020. The Claimant's evidence is that she undertook other work at the office, such as archiving files, because other people were in the office during furlough. Mr Chick's evidence is that he only asked the Claimant to undertake the payroll duties and he did not ask her to do any other work during furlough. I prefer the Claimant's evidence that she was asked to complete her payroll duties during furlough, as this is entirely consistent with Mr Chick's evidence, and that she decided to undertake other duties when she was in the office as she could see there were other matters that needed to be dealt with, such as archiving and filing. It is common ground that the Claimant dealt with an issue to do with pensions information while she was on furlough.

33. It is common ground that Mr Murray did not look at any of the work carried out by the Claimant and he did not make any assessment himself of how much time the Claimant actually spent on each individual activity, such as filing and archiving. The Claimant carried out a piece of work in relation to pensions while she was on furlough and the investigation officer took the Respondent's accountant's assessment of how much time would be involved in this work as being the correct number of hours required to undertake the task, but Mr Murray did not look at the piece of work himself when he decided to not accept the Claimant's account as to how many hours it had taken her to complete the task.

34. Mr Murray did not provide the Claimant with a copy of her 2020 diary throughout the investigation as he took it home with him each night. He brought the diary with him to each of the three interviews he held with the Claimant and she was allowed to look at the diary during the interviews, but she was not provided with a copy which she could look at in her own time.

35. Mr Murray decided that the Claimant had failed to give a clear explanation for the discrepancies during the three interviews he had conducted with her. He found that the agreement for banking hours only related to 2019 and not to spring 2020. As a result, he produced a report, which is that pages 76 to 80 of the bundle, stating that there was sufficient evidence to suggest potential fraud had taken place and that the matter should proceed to a disciplinary hearing. A copy of the report was sent to the Claimant and to Mr Chick who made the decision to proceed to a disciplinary hearing, as can be seen in the letter from Mr Chick to the Claimant at page 130 inviting the Claimant to attend a disciplinary hearing for fraudulent payroll completion resulting in payments for hours not worked.

36. Mr Murray concluded in his report that the Claimant had paid herself monies that she was not entitled to which were incommensurate to the number of hours worked during October 2019 to June 2020 on the assumption that the Claimant's hours were based on a regular working week of two days. Mr Murray accepted in cross examination that he did not have evidence of the specific days the Claimant had worked or the specific hours she had worked on any given day and that his investigation was based upon assumptions he had made from the information provided by the accountant and the electronic footprint left by emails to and from the Claimant on any given day. Mr Murray did not have a definition of fraud in front of him when he was conducting his investigation and he accepted in questions put by this Tribunal to him that the discrepancies he was investigating may have come about as a result of errors, as opposed to deliberate acts.

37. Mr Murray signed his witness statement on 8 February 2022. The statement contains a statement of truth and it states that he had the opportunity to alter or amend anything before signing it. Mr Murray also confirmed orally at the time he gave his evidence to this hearing that the contents of his statement were true and that no amendments were required. However, he changed his evidence during cross examination to say that he was not present at the disciplinary hearing on 2 September 2020 as the notetaker, which

is in direct contradiction of paragraph 17 of his witness statement and the notes at pages 141 to 143 of the bundle. Mr Murray said that the notes at page 141 had not been taken by him, but he was unable to say who had taken them. The other three people present at the meeting on 2 September 2020 stated that they had not taken the notes appearing at pages 141-3 and the Claimant's uncontested evidence is that she was sent a copy of this document by the Respondent as a result of attending the disciplinary hearing. I asked the Respondent's solicitors to forward a copy of their disclosure to this Tribunal and the Claimant in order to establish whether the disciplinary meeting notes at pages 141-3 had been disclosed by the Respondent. The relevant email and attached documents were received by the Tribunal on the second day of the hearing, however the documents attached to that email did not include any notes from the disciplinary hearing of 2 September 2020. I asked for copies of any further disclosure to be provided, but this was not forthcoming from the Respondent's representative. In the circumstances, I prefer the evidence of the Claimant that she was provided with a copy of the notes appearing at pages 141to 143 by Mr Toward of the Respondent company as part of the internal disciplinary process. Mr Murray was unable to explain why his witness statement stated that he was the notetaker if this was truly incorrect or why he had signed the statement and sworn on oath that the contents of the statement were true. The Respondent has also been unable to explain why the document at page 141 states that Mr Murray was the notetaker, which corroborates Mr Murray's statement, if there had never been an intention for him to be the notetaker. The index to the bundle states that the document at pages 141 to 143 are the notes from the disciplinary hearing and it does not attribute them to the Claimant. Further, the Claimant's reasons for appealing against her dismissal entirely corroborate the notes at the bottom of page 142 and I find, on the balance of probabilities, that the Claimant must have been provided with a copy of this document at the time of the internal disciplinary hearing in order for her to appeal her dismissal on the basis of there having been an agreement to adjourn that disciplinary hearing.

38. The Claimant attended the disciplinary hearing on 2 September 2020 and was accompanied by a friend, as she had been throughout the entire disciplinary process. The disciplinary hearing was chaired by Mr Cowan, who is a friend of Mr Chick and is not employed by the Respondent company. A copy of Mr Cowan's notes can be seen at pages 155 to 166 of the bundle. The notes do not say who the notetaker is and they contain comments by Mr Chick, which are highlighted in yellow. The comments were added by Mr Chick prior to the notes being provided to the Claimant. Many of the comments added by Mr Chick contain exclamation marks and emotional statements such as "*completely untrue*" and "*trust my mistake*!" and "*trust again!*". It is clear from this document that Mr Cowan sent the notes from the disciplinary hearing to Mr Chick for him to provide his comments and that Mr Chick had spoken to his solicitor about Mr Toward making the final decision so that he could carry out the appeal hearing, therefore making the assumption that there would be an appeal hearing.

39. The Claimant's evidence is that there were many inaccuracies with the information provided to her prior to the disciplinary hearing and there were documents missing from what should have been provided to her in advance of the hearing i.e. attachments 8 and 10 to the invitation letter plus the 2020 diary. It is common ground that there was an

adjournment and the Respondent provided the missing documents and some updated information to the Claimant during the hearing. The Claimant's evidence is that Mr Cowan had difficulty in understanding the findings Mr Murray had made in respect of the hours worked and wages claimed and, therefore, Mr Cowan suggested that the hearing should be adjourned so that Mr Murray could provide simplified and clearer information and that the hearing would resume at a later date as a video hearing. The Respondent's evidence is that the disciplinary hearing was not adjourned, but that it was agreed that if a further meeting was required with the Claimant it would be conducted by video. I prefer the evidence of the Claimant as it is entirely consistent with the notes at pages 141 to 143 of the bundle and the grounds of appeal submitted by the Claimant at the time these events took place and I am further persuaded by the fact that the information I have seen at this hearing is unclear and none of the Respondent's witnesses have been able to explain exactly how they have concluded the Claimant has over claimed wages on any particular day. In those circumstances, it is more probable than not that Mr Cowan would have required better information to be provided by Mr Murray before he could conclude that there had in fact been acts of fraud committed by the Claimant on particular days.

40. Mr Cowan's evidence to this Tribunal is that he found a definition of fraud from the Internet and had this in front of him at the time he conducted the disciplinary hearing. The definition he was using was "wrongful or criminal deception intended to result in financial or personal gain". Mr Cowan concluded that there had been wrongful deception on the part of the Claimant because there was no evidence that the Claimant had worked hours she had claimed for. In reply to questions asked by this Tribunal Mr Cowan said that he had not looked at the actual work undertaken by the Claimant, such as the work relating to the pension query the Claimant dealt with during the furlough, which was a discrete piece of work, and that he accepted Mr Murray's findings in his investigation without looking into the details himself. Mr Cowan said that Mr Murray had afforded the Claimant some leeway in assuming that her working day was longer than it actually was when he carried out his investigation.

41. Mr Cowan prepared a report in respect of the disciplinary hearing (pages 224 to 227). As he was not an employee of the Respondent company, Mr Cowan did not have the authority to dismiss the Claimant, but he recommended that she should be dismissed. The Claimant was expecting to receive a new hearing date for the reconvened disciplinary hearing, however she received an email on 14 September 2020 stating that there was no need for any further meetings (page 168). The Claimant was provided with additional documentation with this email in respect of the various appendices which were missing from the letter inviting her to a disciplinary hearing and corrections to inaccurate documents, along with a copy of her 2020 diary. The Claimant did not have the opportunity to consider the documents attached to the email of 14 September 2020 before a decision was made about her dismissal and she was not given the opportunity to make any further representations.

42. Mr Chick asked Mr Toward to take the final decision in respect of the disciplinary hearing. Mr Toward did not hold any meetings with the Claimant and based his decision upon the report provided by Mr Cowan. He wrote a letter to the Claimant on 15 September 2020

(page 221 to 222) in which he informed the Claimant that she was to be summarily dismissed on the grounds of gross misconduct for fraudulently claiming payments for additional hours which she had not worked, fraudulently claiming banked hours which she had not worked and fraudulently claiming holidays which were not owed. Mr Toward went on to say in his letter of dismissal that he believed the Claimant had broken trust with the business and abused her position making it untenable within the company. The Claimant was given the right of appeal to Mr Chick.

43. Mr Toward accepted at this hearing that he did not have any knowledge or understanding of the ACAS Code on Disciplinary and Grievance procedures, he had not received any training on disciplinary matters and he had not previously conducted a disciplinary hearing in recent years.

44. On 21 September 2020 the Claimant submitted her letter of appeal (page 228). The main ground for the appeal was that the disciplinary meeting of 2 September 2020 was adjourned and was to be reconvened after she had received the documents which had been requested (which the Claimant received on 14 September 2020) and that, therefore, the decision had been made without the Claimant being given an opportunity to make full representations and in breach of the ACAS Code. The Claimant raised concerns about the appeal being heard by Mr Chick given his involvement with the commercial disagreement and his involvement in the investigation into her conduct. The Respondent therefore decided to appoint a third party to hear the appeal, Mrs Helen McDougall who operates a HR consultancy.

45. On 21 October 2020 the Claimant received an email from Mrs McDougall advising her that she had been appointed to hear the appeal (page 236). The Claimant was informed that she could be accompanied by a fellow work colleague or a trade union representative. The Claimant asked to be accompanied by a friend, as she had throughout the whole of the investigatory and disciplinary process. Mrs McDougall refused this request on 26 October 2020 (page 239). The Claimant explained that she was no longer an employee and was not a member of a trade union and requested again to have a friend present, particularly as the process was affecting her mental health, and she had been allowed to have a friend present throughout the entirety of the Respondent's internal process to date. Mrs McDougall eventually agreed to the Claimant bringing a friend to the appeal hearing but she stated that the companion would not be allowed to speak at all as the Claimant did not have a disability and there was no reason to make reasonable adjustments for her, as set out in her letter at page 240 of the bundle.

46. On 3 November 2020 the Claimant wrote to Mrs McDougall and explained that she did not feel able to attend the appeal hearing without having a companion who could speak on her behalf. The Claimant explained in the email at page 242 that she was appealing on the basis that the disciplinary hearing had been adjourned and that there had been a failure to reconvene that hearing prior to a decision be made which led to the decision being unfair. The Claimant also set out in this email that she believed she had a way to prove the hours she had worked but that the Respondent had failed to provide her with her 2019 diary and had also failed to provide her with the document she had requested

which would have proved she was in attendance at work and using her computer on specific days.

47. Mrs McDougall decided to proceed with the appeal hearing in the Claimant's absence and did not ask her to produce any written submissions before making a final decision. The appeal consisted of Mrs McDougall reviewing the documents from the investigation and disciplinary hearings. Having reviewed the documents, Mrs McDougall decided that there was no valid reason to overturn the original decision and she upheld the dismissal, setting out her decision in a letter dated 9 November 2020 (page 245) and attaching the report which is at pages 246 to 253 of the bundle.

48. Mrs McDougall's witness statement was signed on 15 February 2022 and it contains a statement of truth. At the beginning of her evidence at this hearing she changed her evidence at paragraph 2 of her statement and said that she did not see the minutes from the disciplinary hearing at pages 141 to 144, but rather she received the minutes at pages 155 to 165. She said that she had never seen the minutes at pages 141 to 143 before, but she was not able to give any explanation as to why that error had occurred in her witness statement and why she did not make that amendment until after she had heard the evidence of Mr Murray and Mr Cowan at this hearing. Given that the Respondent has been professionally represented throughout these proceedings and that Mrs McDougall is a HR professional whose job it is to conduct such matters professionally, I find it more probable than not that Mrs McDougall decided to change her evidence after hearing the evidence of Mr Murray and Mr Cowan at this hearing and that she has changed her evidence in an attempt to mislead this Tribunal.

Contributory conduct

49. The Claimant recorded her days and hours of work in a work diary which was kept on the Respondent premises. The Claimant worked three days per week and there was considerable flexibility in the way she managed her workload and in choosing which day she would attend the office in respect of her third day.

50. Mr Murray conducted his investigation on the premise that the Claimant worked two days per week and without access to the Claimant's 2019 diary. Therefore, he looked at whether there was any email activity in respect of the days worked, for example at paragraph 5 of his report Mr Murray he found no electronic footprint for 20 January 2019 and 6 May 2019. As 20 January 2019 was a Sunday and 6 May 2019 was a bank holiday, this may account for the lack of any computer activity. No evidence has been presented in front of this Tribunal that the Claimant received wages for 20 January 2019 and 6 May 2019. The investigation was flawed from the beginning as the Respondent made an assumption that the Claimant worked only two days per week and that any wages claimed over and above what might be expected for someone working two days per week was claimed inappropriately. The Claimant, in fact, worked three days per week and there is no evidence that she improperly inflated her claim for wages over what was due to her for working three days per week.

51. There was an agreement between the Claimant and Mr Chick that she could bank her hours and the Respondent would pay the wages in respect of those hours at a later date. These hours were recorded in the work diary and the Claimant's personal notebook and the Claimant provided the Respondent with the number of banked hours and the relevant dates (page 98). The Respondent's investigation was made on the assumption that there was no agreement for the Claimant to bank her hours in 2020, however this is incorrect as there was an agreement between the Claimant and Respondent from early 2019 that she could bank her hours and claim them at a later date. No evidence has been produced in front of this Tribunal that the Claimant did not work hours that she had banked or that she was not entitled to the wages in respect of those hours.

52. The Claimant was not provided with a copy of her 2020 diary by the Respondent until after the disciplinary hearing had been concluded. As a result, she was unable to explain why the one day's holiday in January 2020 was not recorded as a holiday on the Sage accounting system. Mr Murray accepted that this could have been an error or oversight whilst being questioned by this Tribunal. There is no evidence that the Claimant wrongfully claimed one day's holiday pay in January 2020 which she was not entitled to.

The law

53. Section 98 of the Employment Rights Act 1996 states at subparagraph 4

> "Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was 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."

54. Section 122 of the Employment Rights Act 1996 states at subparagraph 2

> "Where the Tribunal considers that any conduct of the complainants 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 that amount accordingly."

55. Section 123 of the Employment Rights Act 1996 states at subparagraph 6

> "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."

56. Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 states if it appears to the Tribunal that the employer or employee has failed to comply with a relevant code of practice and that that failure was unreasonable the employment Tribunal

may, if it considers it just and equitable in all circumstances to do so, increase or reduce any award it makes to the employee by no more than 25%.

57. Section 13 of the Employment Rights Act 1996 states that an employer shall not make deductions from an employee's wages unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision in the workers contract, or the workers previously signifying writing her agreement or consent to the making of the deduction.

58. Regulation 14 of the Working Time Regulations 1998 sets out, at subparagraph 3, the formula to be used in working out the amount of payment an employee is entitled to upon the termination of her employment in respect of any accrued and outstanding annual leave entitlement at the date of termination.

59. I refer myself to the leading case of British Home Stores Ltd v Burchell [1980] ICR 303 in which the Employment Appeal Tribunal set out a threefold test to be applied in conduct dismissals. In such cases it is important to establish the following:

    - whether the employer believed the employee guilty of misconduct
    - whether the employer had in mind reasonable grounds upon which to sustain that belief, and
    - at the stage at which that belief was formed on those grounds, whether the employer had carried out as much investigation into the matter as was reasonable in the circumstances

60. I refer myself to the case of Lawless v Print Plus EAT 0333/09 in which Mr Justice Underhill pointed out that although the phrase "just and equitable in all the circumstances" in relation to the uplift under section 207A TULR(C)A connoted a broad discretion, the relevant circumstances were confined to those which were related in some way to the failure to comply with the statutory procedures. The relevant circumstances to consider are whether the procedures were applied to some extent all were ignored altogether, whether the failure to comply with the procedures was deliberate or inadvertent, and whether there were circumstances that mitigated the blame worthiness of the failure to comply.

61. The Respondent refers me to the case of GM Packing (UK) Ltd v Haslem UKEAT/0259/13 in which the Employment Appeal Tribunal decided that, where the disciplinary process was delegated to an external consultant, the reason for dismissal was a set of facts or beliefs in the mind of the consultants, even though the recommendation for dismissal required approval from the employer.

Conclusions

62. Applying the relevant law to the facts, I find that the reason why the Respondent undertook an investigation into the Claimants wages was because of the commercial dispute between the Respondent and the Claimant's husband. I am satisfied that, if this

dispute not existed, the Respondent would not have had any motivation to investigate the Claimant and it had no grounds for starting such an investigation. However, although Mr Murray, Mr Cowan and Mr Toward were all aware of the commercial dispute, there is insufficient evidence in front of me today to find that this was the sole or principal reason for the Claimant's dismissal.

63. I accept the Respondent's submission that the reason for dismissal is correctly described as a set of facts known to the employer, or of beliefs held by him, which cause him to dismiss the employee. I further accept that the reasons for dismissal are those known to the person who recommended dismissal rather than the person within the Respondent organisation who implemented the decision to dismiss. In those circumstances, the reasons for dismissal are those of Mr Cowan who recommended dismissal in this case. Looking at all of the evidence Mr Cowan had in front of him at the time he made his recommendations, I find that the principal reason for the Claimant's dismissal was that of conduct, which is a potentially fair reason under the Employment Rights Act 1996.

64. Following the list of issues as agreed between the parties, it is necessary for this Tribunal to apply the test set out in Burchell, above. Looking at the facts, as set out above, I find that the Respondent did not believe the Claimant to be guilty of gross misconduct at the time of her dismissal because Mr Cowan had identified at the disciplinary hearing on 2 September 2020 that the information which he had been provided with was unclear and the investigating officer had been asked to provide a simplified version to clearly set out what the alleged acts of fraud were. The investigation carried out by Mr Murray does not set out in terms the exact days and hours worked by the Claimant and how this correlates with the exact wages claimed for the relevant period and the resulting discrepancy. The report at page 76 was written on the assumption that the Claimant worked two days per week, which is incorrect. Mr Chick's evidence to this Tribunal was that the Claimant worked three days per week and that he had no discussions with her about reducing her working days down to 2 days per week. The 2019 and 2020 diaries which contained the Claimant's evidence in respect of the days and hours that she had worked were within the control of the Respondent at the relevant time but were not provided to the Claimant in order for her to effectively deal with the allegations put to her. The Respondent did not provide the Claimant with a copy of her 2020 diaries until after the disciplinary hearing had taken place and Mr Murray based his investigations on assumptions made without the evidence from the 2019 diary. The Claimant provided Mr Murray with her account of the days and hours she worked in respect of the claim for banked hours (page 98) but there is no evidence that Mr Murray took this information into account or that he crossreferenced it with the evidence he had obtained from the accountants, nor is there any evidence that Mr Cowan took this information into account at the disciplinary hearing.

65. The most troubling aspect of this case is the fact that the Respondent's witnesses have changed their evidence at this hearing once they have been confronted with the knowledge that they had not followed a reasonable procedure. The evidence points to Mr Murray being the notetaker at the disciplinary hearing and it is disingenuous of him, Mr Cowan and Mrs McDougall to subsequently say that he was not the notetaker and that the notes are produced in the bundle at pages 141 to 143 are not Mr Murray's. The

original unchanged evidence all corroborated each other and the witnesses have misled this Tribunal in changing their evidence to corroborate the lies told by Mr Murray.

66. In addition to the above, I find that no reasonable employer would have sent a copy of the disciplinary hearing notes to the managing director for his personal comments before agreeing those notes with the Claimant. I also find that no reasonable employer would have made recommendations or a decision based upon the emotional outbursts written by Mr Chick on the notes from the disciplinary hearing. The reasonable way to proceed would be for the disciplining officers to conduct an interview of the managing director if further information was required from him before a final decision could be made. It appears from the recommendations made by Mr Cowan in his report that he took all of Mr Chick's emotional comments at face value as being the truth without any reference to any evidence of specific dates when it could be proved that the Claimant had not been in work or specific day which proved that the Claimant had not worked all the hours that she had claimed. With respect to the appeal process, whilst the appeals officer may have technically been correct in that the statutory right to be accompanied relates to a trade union representative or a fellow work colleague, I find that it was not reasonable, given that the Claimant had been allowed by the Respondent to be accompanied by a friend throughout the entirety of the process up to the appeal, for the appeal officer to then refuse to allow the Claimant to be accompanied by a friend. I find that the appeal officer's decision not to allow the Claimant's companion to speak at all contributed to an unfair process overall as it is not in the spirit of the ACAS Code on Disciplinary and Grievance procedures, which sets out the minimum requirements for a fair process. The Code clearly states at paragraph 17 that the companion is allowed to address the hearing to put and sum up the workers case, respond in behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. Mrs McDougall's proclamation that the Claimant's companion would not be allowed to speak at all was clearly unfair when looked at in light of the requirements of ACAS Code, the spirit of that code and the foregoing procedure which had been adopted thus far by the Respondent.

67. In all the circumstances, I find that the Respondent did not carry out a reasonable investigation, disciplinary process or appeal process and, as a result, the Respondent did not hold a reasonable belief in the Claimant's guilt. The allegation was one of fraud, however the investigation did not show that the Claimant had knowingly claimed wages which she knew she was not entitled to or that there was any evidence of wrongful deception on the part of the Claimant. Mr Murray accepted that any discrepancies may have been down to an error and that he did not have specific evidence of fraud committed on specific dates, but rather that he was working on assumptions. Therefore, I find that the investigation fell outside the range of reasonable investigations open to an employer in the circumstances and that the Claimant's dismissal was unfair. Given this finding, there is no need for me to make a finding on the third element of the Burchell test, but for completeness I find that the Respondent had not carried out as much investigation into the matter as was reasonable because the Respondent failed to provide the Claimant with her 2020 diary or copies of the emails she had requested or investigate further the information provided by the Claimant at page 98 of the bundle.

68. Although there is no requirement for me to find whether dismissal was within the range of reasonable responses open to an employer in the circumstances, given that I have already found that the dismissal was unfair, for completeness I find that dismissal was not within the range of reasonable responses given that the Respondent did not have sufficient grounds to reasonably conclude that the Claimant had committed acts of fraud within the workplace. The Respondent did not have proper procedures for recording hours worked or holidays taken and it was incumbent upon the employer to put in place those procedures for its employees to follow. The more serious the allegation of gross misconduct, such as fraud which might bring a worker's career to an end, the more anxious scrutiny must be implemented by the employer when making such findings. If there had been some discrepancy, no reasonable employer would have dismissed under these circumstances.

69. Given my findings above, I find that the Respondent did not act reasonably in treating the misconduct as sufficient reason for dismissing the Claimant in the circumstances as it did not have a proper basis to reasonably conclude, on the balance of probabilities, that the Claimant had committed an act of fraud.

70. Turning to remedy, the Respondent has submitted that the Claimant would have been dismissed if fair procedure been followed. However, none of the professionally drafted witness statements for any of the Respondent's witnesses give any evidence whatsoever about what would have happened had the Respondent adopted and applied a fair and reasonable investigation and disciplinary procedure. The evidence that I have seen at this hearing does not satisfy me that, had a proper and reasonable procedure been adopted by the Respondent, the employer would have held a reasonable belief in the Claimant's guilt because the Respondent does not possess the relevant data required to make that assessment. In the circumstances, I find that there is no chance whatsoever that the Claimant would have been dismissed fairly by the Respondent and therefore I find that no reduction should be applied to the Claimant's compensation to reflect the chance that she would have been fairly dismissed in any event.

71. In respect of the basic award, I find that no evidence has been presented before me at this hearing from which I can conclude that the Claimant was guilty of blameworthy or culpable conduct before her dismissal by the Respondent. I have not been referred to her diary entries and I have not been given sufficient evidence on which to conclude that the Claimant claimed wages and holiday pay which she was not entitled to. Therefore, I find that it is not just and equitable to reduce the amount of the Claimant's basic award in accordance with section 122 (2) ERA 1996.

72. With regard to the submissions made by the Respondent in respect of contributory conduct, I am not satisfied that the Claimant undertook any blameworthy or culpable actions which caused or contributed to her dismissal. There is insufficient evidence that the Claimant claimed wages which she was not entitled to, whether deliberately or otherwise, prior to her dismissal. In the circumstances, I find that it is not just and equitable to reduce the Claimant's compensatory award pursuant to section 123 (6) ERA 1996.

73. In respect of the Respondent's submission that the Claimant failed to comply with the ACAS Code by failing to attend the appeal hearing, I find that, although the Claimant made the decision not to attend the appeal hearing, that failure was not an unreasonable failure on the Claimant's part because it was perfectly reasonable for her to expect the appeal hearing to be conducted in the same manner the Respondent had conducted the investigatory and disciplinary hearings. The Claimant made it clear to the appeal officer that she found the whole process emotionally distressing and Mrs McDougall responded in an entirely dispassionate manner, failing to take into account how the previous hearings had been conducted. Given that the Claimant already felt that she had been treated unreasonably by the Respondent in that the adjourned disciplinary hearing had not been reconvened and that the appeal hearing was to be conducted remotely, which would make her participation more difficult, it was not unreasonable for her to decide not to attend the appeal hearing. In the circumstances, I find that there has not been an unreasonable failure by the Claimant to comply with the ACAS Code and no reduction should be made to the compensatory award accordingly.

74. I find that there was a failure by the Respondent to comply with the ACAS Code on Disciplinary and Grievance procedures in that they failed to arrange the adjourned disciplinary hearing, they failed to allow the Claimant's time to consider the further information provided on 14 September 2020 and they made the decision to dismiss her without providing her with the full opportunity to present her evidence and arguments in respect of all of the allegations. The Respondent has not provided an adequate or indeed any explanation as to why it conducted itself in this manner and, to compound matters, the Respondent has sought to mislead this Tribunal by changing its evidence at the last minute about whether the the disciplinary hearing was adjourned. In the circumstances, I find that the Respondent's failure to comply with the ACAS Code was unreasonable and, pursuant to section 207A of TULR(C)A, I find that it is just and equitable for this Tribunal to award an uplift on the compensation to be awarded to the Claimant's in respect of the claims of unfair dismissal, unauthorised deduction of wages and holiday pay. The amount of that uplift is to be determined at the remedy hearing.

<u>Wages</u>

75. It is common ground that the Claimant was required to work for the Respondent during the period of furlough in May 2020 in order to complete the payroll. The rules on furlough at the time were that flexible furlough was not allowed and employees were either employed and paid at their normal rate or sent home and paid furlough at 80%, unless the employer agreed to top up their furlough pay with the remaining 20%. In this case, the Claimant did not work for the Respondent during April and received 80% of her wages whilst at home, however she was required to attend the office on three occasions in May 2020 to complete an ordinary day's work dealing with the payroll. In such circumstances, the Claimant should have been taken off furlough for a period of three weeks and then returned to furlough at the end of that period.

76. I do not accept the Claimant's submission that she is entitled to overtime pay for 66.5 hours for the work completed in May 2020. In essence, the Claimant was working a normal week and therefore she should have been paid her normal wages, but she only received 80% of those wages. In the circumstances, I find that the Claimant has been underpaid wages for the weeks that she worked in May 2020 and she is entitled to the remaining 20% of her wages accordingly for a period of three weeks.

77. In accordance with my findings above in respect of the unreasonable failure by the Respondent to comply with the ACAS Code, the award for three weeks wages is subject to an uplift under section 207A of TULR(C)A.

Holiday pay

78. The Claimant's uncontested evidence is that her holiday year started in January 2020 and that she was entitled to 17 days per year on a pro rata basis. The Claimant's employment terminated in September 2020 (i.e. 9.5 months into the holiday year) which gives a pro rata entitlement of 13.5 days (17 days divided by 12 months multiplied by 9.5).

79. The Claimant received one day's holiday pay in August 2020 and therefore she is entitled to receive the accrued and outstanding holiday pay for 8.5 days as at the date of termination.

80. In accordance with my findings above in respect of the unreasonable failure by the Respondent to comply with the ACAS Code, the award for 8.5 days holiday pay is subject to an uplift under section 207A TULR(C)A.

Employment Judge Arullendran

Date: 9 March 2022

Note: This has been a remote hearing which has not objected to by the parties. The form of remote hearing was video. A face to face hearing was not held because it was not practicable, no-one requested the same and all the issues could be determined in a remote hearing.

Note: Reasons for the judgment having been given orally at the hearing and no request for written reasons having been made at the hearing, written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.