



EMPLOYMENT TRIBUNALS

Claimant: Miss M Thandi and others

Respondents: 1.Next Retail Limited
2.Next Distribution Limited

Heard at: Leeds

On: 4, 5, 6, 7 and 8 July 2022.
11, 12, 13 and 18 July, 4 and 5
August 2022 (in chambers)

Before: Employment Judge D N Jones
Mr W Roberts
Ms G M Fleming

REPRESENTATION:

Claimants: Mr A Short, QC, Ms E George, counsel

Respondents: Mr Reed, QC, Mr G Anderson, counsel

JUDGMENT

1. For the purpose of evaluating the jobs of the lead claimants and the selected comparators, the alterations in the following Reasons shall be incorporated into the Job Descriptions which the representatives have prepared: deletions are marked by a line through the relevant passages and additions in emboldened type.

2. The decision is unanimous.

REASONS

Introduction

1. There are 956 claimants in this action. Some are still employed and others have left. They have worked in retail stores of Next from all over the country. There are approximately 530 stores across the UK and Ireland. They say they have not been paid properly. Most are women and say that men are doing work of equal value but are paid more. Those are men who work in warehouses which store the goods that Next sell, either in store or on-line. If the work is of equal value that would be discriminatory on the grounds of sex.

2. There are a number of claimants who are men who are doing the same jobs as the lower paid women. They say that they should also receive the higher rate of pay if the women claimants are correct, otherwise that would be discriminatory treatment because of sex. These are known as piggy-back claims.

3. This type of discrimination is redressed by providing equality of terms in respect of pay. A term is implied into the contracts of employment by operation of law. It is called a sex equality clause. That term has the effect of modifying the contract terms so that they must not be less favourable than those of the comparator.

4. Our task is therefore to decide if the work is of equal value.

5. We shall be assisted in deciding that question by three independent experts who shall prepare a report on it. Before they do, they must know what it is they are comparing. What do the claimants do at work? What do the higher paid men do?

6. The starting point is the Job Descriptions. Experience has shown that the written job descriptions which are provided at the start of employment can be incomplete and sometimes inaccurate. Our rules have therefore created a procedure to establish what the relevant work is. The parties each set that out in writing. In most respects what they set out is agreed. Where it is not, we must decide what the work entails. That decision is made on the evidence they present at a Stage 2 hearing. We decide it on a balance of probabilities.

7. When there are as many claimants as there are in this case, it would be very time consuming and costly to deal with each one separately. Because most are doing the same or similar jobs, it is sensible to select a few who can explain what they do. We call them lead claimants. In this case there are three: Helen Cherry, Alison Milton and Amanda Cox.

8. A similar approach is taken to the men's work which is alleged to be of equal value. Four comparators have been selected: Andrejs Zale, Steven Oliver, Calvin Hazelhurst and Richard Parker.

The Evidence

9. The three lead claimants, Helen Cherry, Alison Milton and Amanda Cox all gave evidence. The respondents called Ms Danielle Law, the Store Manager at Hedge End, Southampton from June 2020, Mr Mick Jones, the Assistant Site Manager at Dearne Valley Boxed warehouse, Rotherham, from March 2012, Ms Caroline Watts, Store Manager at the Bristol Cribbs Causeway store from December 2020 and Mr Mark Naylor, Site Operations Manager at the Elmsall complex, Pontefract.

10. The parties produced documents to in excess of 10,000 pages. The parties refined the issues throughout the hearing, as many of the disputed items were resolved. They produced a final schedule of issues for determination with their closing submissions.

11. The Tribunal considered whether to visit any of the sites at which the comparators or lead claimants worked. In the light of what had been agreed and remained to be adjudicated after the evidence, we were satisfied that was not necessary.

The Law

12. Section 65(6) of the Equality Act 2010 (EqA) provides:

“A’s work is of equal value to B’s work if it is –

(a) neither like B’s work nor rated as equivalent to B’s work, but

(b) nevertheless, equal to B’s work in terms of the demands made on A by reference to factors such as effort, skill and decision-making”.

13. In ***Beal v Avery Homes (Nelson) Ltd [2019] EWHC 1415 (QB)*** Lavender J made the following observations:

(1) Where an employee is instructed by their manager to do something, then, if they do it, that is surely part of their work. Moreover, that is so, even if they might have been entitled to say, "But that is not something I am obliged to do."

(2) The same is likely to be the case where the manager does not instruct, but requests or encourages, the employee to perform the activity in question. On the other hand, in such a case, it may be relevant to note for the expert's benefit (if it is the case) that the employee could not be required to perform that activity.

(3) Where an employee does something which they have not been instructed, requested or encouraged to do, it may still constitute work if, for instance:

(a) it is simply a way of doing something which forms part of their work; and/or

(b) their manager knows that they are doing it, but does not object and thereby tacitly approves of their doing it.

(4) On the other hand, something may not be part of an employee's work if they have not been instructed, requested or encouraged to do it, their doing it has not been approved by their employer and it does not simply constitute a way of doing something which forms part of their work.

Analysis and conclusions

Common findings across the job descriptions of the lead claimants

The consequence of timings, targets and deadlines

14. It is submitted by Mr Short that the targets and deadlines which it is agreed were set, had consequential impacts upon performance management. This added to the pressure to achieve those targets and deadlines. There was no incentivisation by a regular bonus scheme, but achievement was recognised to a limited extent by reward under the Star Rating Review.

15. The respondents submit there was no direct correlation between performance management and achieving the respective timescales which had been set for particular tasks.

16. We find that there was a correlation, but it was not instantaneous if a target was not met. The timeframes were set with a view to achieving efficiency in what Ms Watts described as a fast-paced environment. Mr Short drew our attention to extracts from training materials, notices and the criteria applied in evaluating an employee's annual

performance by reference to a four-star grading all of which included some reference to speed and efficiency.

17. We accept the submission of Mr Short that this requires inclusion in the respective parts of the Job Descriptions, albeit we have modified the wording proposed more suitably to address its significance: *The JH is expected to work at a pace and level of efficacy to meet targets and deadlines and may be given a lower grading on the Star Rated Review if they fail to do so.*

Common findings in respect of parts of the Job Descriptions of the comparators

Bonus/BS 85

18. Mr Short invites us to use the BS85 standard (85%) which the respondents accept is that to which warehouse staff are required to work, but they argue for planning and bonus purposes the rate of 95% is the reflective measure. Mr Short argues that we should not recognise the bonus element not least because no bonus scheme is available to the claimants. Historically an inequality built into equal pay has arisen from bonus schemes which have been negotiated collectively by unionised workforces, which have been predominantly in occupations undertaken by men, in contrast to some non-unionised workplaces which comprise of women. It is said inclusion of the bonus element would perpetuate the very inequality which the equal pay legislation is designed to overcome.

19. The first problem in respect of this issue is a practical one. The rate invited by the respondents of 95%, rather than 85%, has been calculated to include such factors as stoppages to the production line. There can be blockages or mechanical faults which temporarily halt production. Bonus is generated above 85%. There is no clear demarcation of the rate at which bonus is generated having discounted the allowance for planning considerations such as stoppages.

20. The second problem with the suggestion that work attributable to the bonus should be left out of account, is that our task under the legislation is to measure the value of the work done. That is the actual work, not some notional apportionment of part of it. If what is actually done is valued equally, regardless of how the remuneration package is made up, the law will imply a contractual term that the total remuneration must be no less favourable.

21. That does not mean that Mr Short's submission has no force. In this case, we recognise that what the warehouse workers are required or obliged to do in respect of their rate of production is distinguishable from what they may choose to do to generate higher levels of pay. That is a factor to which we and the experts should have regard. Furthermore, because we have no means to untangle that aspect of the higher rate of production of 95% which is to cater for stoppages from that which makes up some element of bonus, the reliable approach is to recognise the obligation to meet BS85 rate, with a recognition it is the minimum rate.

22. We have been asked to make findings about the consequence of the tasks on the jobholders, by way of physical or mental demand. That is a far more difficult task. Each job holder will have different levels of ability, capability, strength and resilience, mentally and physically. We do not have any expert evidence from an ergonomist or occupational health clinician to assist us to draw conclusions about how these tasks

might impact upon the man or woman of average strength, ability and fortitude. With respect to a number of the invitations, such as loneliness, we consider such a finding is not possible or appropriate. We address this matter specifically below. In respect of others, we have had regard to the evidence of the comparators or their respective managers. They each have lengthy experience of the work. We regard the evidence of the current or most recent job holders as carrying the most significant weight, although it was not conclusive. We recognise it requires consideration with other observations and opinions, which the comparators were not directly questioned about on oath or in any great detail at interview.

23. There was no satisfactory evidence to attribute that additional element of physical or mental demand created by work which generated the bonus and, in most instances, the job holder would have been unaware of the relative rate at which they were operating. They would only know if they asked a manager and there is no evidence that information was commonly requested. Even if we were able to discern physical or mental stresses which we could apportion working to achieve bonus, the submission of Mr Short is apposite that this was not borne of an obligation, but to a degree incentivised by the drive to earn more. We say to a degree, because there would be subliminal peer pressure as the levels of productivity were not wholly self-determined; they were dependent on the rate generated higher up the line as were those lower down.

24. The BS85 publication describes that standard as “*at a comfortable speed, neither briskly nor with much effort*”. Mr Short asked us to apply a narrative to all bonus or productivity issues in the schedules, which included this passage. We decline that invitation. It reflects the minimum obligation but would involve closing a mind to anything higher than that, which is inappropriate for the reasons at paragraph 20. We have made some amendments where appropriate either by acknowledgment of the minimum or to reflect the comments of the comparators in interview or their managers.

The noise issue

25. Some time was spent exploring the extent to which the job holders were or were not able to talk in the Dearne Valley Boxed warehouse because of the background noise. Whilst the evidence plainly established that there was noise of machinery, such as from large, motorised conveyer belts, it had not reached a level which necessitated measurements by the second respondent’s own safety team nor breached the levels requiring protection under the Health and Safety legislation. Ear plugs were offered to job holders, but they were not obligatory. There was piped music in the background.

26. The emphasis on not being able to talk because of the noise level had to be considered in the context of workers who would be engaged on activities which required their attention or concentration, such that ordinary discourse would not be usual or expected. Where they worked also influenced whether and how they might pass remarks, because they were not usually sitting or standing in close proximity to one another. That was different at breaks or as workers moved about the premises and had a short verbal exchange.

27. In their interviews, Mr Zale and Mr Oliver said they did talk to others.

28. We agreed with the submission of Mr Short, that the aspects of the comparators' Job Descriptions which raised this as an issue should be substituted with the following: *The DVB comparators are able to chat (although not hold lengthy conversations) while carrying out their tasks. Although this is made more difficult by the background noise, particularly if there is no-one at an adjacent workstation or more recently by Covid screens, they will be able to speak to others when they come into contact with them in the course of moving around their workstations or beyond, during blockages and during breaks.*

The loneliness issue

29. One aspect of the work we were asked to make a finding on was the impact it had to the job holder in respect of loneliness.

30. These were not isolated activities, such as working for lengthy periods in a lighthouse or as a night-time security guard. There were many people in the warehouse, and they had not attended to improve their social circle. Even for the sole worker, categorising their work as lonely is highly subjective. As Mr Naylor wryly observed, it can be a lonely experience giving evidence.

31. The evidence of the comparators did not support the suggestion that this work generated feelings of loneliness. It should be omitted from the Job descriptions.

The disputed part of the Job Description of each lead claimant

Helen Cherry

32. Ms Cherry is a Sales Consultant. She works at the Hedge End store in Southampton. She has been there since July 2014. Between May 2012 and July 2012, she worked at the Home and Children Store at the West Quay Retail Park. She initially worked for 12.25 hours but this has varied, and she now works for 33.5 hours. She undertook Team Coach duties from 2012 to 2019.

Flat pack deliveries 19T, 537

33. As described in the Job Description.

34. The claimant ceased this activity in 2018/2019. Ms Law was not at the store then. There is no evidence to contradict the claimant's recollection. She added to this with further clarification in cross examination. We accepted that evidence.

Processing Deliveries 21

35. As described in the Job Description with the additional passage: *The JH is expected to work at a pace and level of efficacy to meet targets and deadlines and may be given a lower grading on the Star Rated Review if they fail to do so.*

Next Loves to Listen (NLTL) 34

36. The Job Description should read: *The Job Holder and her colleagues **must be encouraged to tell as many customers as possible and encourage them to complete a survey.** The JH hands out cards with details of NLTL. The JH **store** has a target for*

completed NLTLS. The JH is told **occasionally** by her managers to offer out the NLTLS cards and QR codes “at every opportunity”, which she **then** does.

37. We accept the evidence of Ms Law that the target was of the store not the individual and if that was met, each individual received 175 reward points. She agreed that every few months a manager would say ‘hand them out as much as possible’, but this was the limit of the obligation.

Child foot measuring 148

38. The JH also offers and provides a foot measurement service as part of shoe sales. The service was offered by the JH during the relevant period. Prior to the pandemic, the foot measurement tool was kept behind the tills. ~~The JH asked customers if it was needed and~~ **If customers requested or appeared to need help** the JH would fetch it and take the measurements. Since the pandemic, the measuring stool is kept on the sales floor and customers are encouraged to use it as self-service. But customers still (and frequently) ask for advice and assistance.

39. The Job Description requires amendment to indicate the recognition of the claimant, in answer to the Tribunal’s questions, that the service was offered when requested rather than proactively offered to each customer. Ms Law accepted that if customers asked for advice and assistance in using the device it would be given, that she could not comment about before June 2020, but the same device and practice had been adopted in her previous store. We accept the evidence of the claimant that this can happen daily and is more likely immediately before return to school.

Serving on the tills 168

40. As described in the Job Description with the additional passage: *The JH is expected to work at a pace and level of efficacy to meet targets and deadlines and may be given a lower grading on the Star Rated Review if they fail to do so.*

41. The respondents accept there were timings or targets of the process. The remaining dispute is about whether the consequence of failure to comply with the target has consequences which we have addressed above.

Scan pay and pack

42. As described in the Job Description with the additional passage: *The JH is expected to work at a pace and level of efficacy to meet targets and deadlines and may be given a lower grading on the Star Rated Review if they fail to do so.*

43. The respondents accept there were timings or targets of the process. The remaining dispute is about whether the consequence of failure to comply with the target has consequences which we have addressed above.

Upselling and link selling 235

44. The JH **may** suggest additional items, eg shoes or jewellery to “complete a look” and explains the different qualities between the different priced products.

45. We accept the evidence of Ms Law that it is not the company policy proactively to suggest add-on sales, but the JH may make suggestions for additional purchases.

This practice is clearly initiated by management, in respect of which we accept Ms Cherry's evidence, but this was applied with discretion in respect of the type of sale or customer.

Domestic violence 237

46. As in the Job Descriptions with the additional passage: *If the JH feels uncomfortable with any of the above, she may refer the matter to a manager, if one is available.*

47. This is a new policy. It was introduced in May 2021. Ms Cherry has never had to implement it. We accept that a manager could be approached if the job holder felt uncomfortable, in need of help or third parties such as the police would be required. We accept the evidence of Ms Cherry that managers were not always, instantaneously on hand.

PPU targets 277

48. As described in the Job Description with the additional passage: *The JH is expected to work at a pace and level of efficacy to meet targets and deadlines and may be given a lower grading on the Star Rated Review if they fail to do so.*

49. The respondents accept there were timings or targets of the process. The remaining dispute is about whether the consequence of failure to comply with the target has consequences which we have addressed above.

Working in pairs 425

50. As described in the Job Description.

51. Ms Law accepted this had been the case but believed it had stopped 3 to 4 years ago. She said they had the flexibility to allocate two to a till within the sales' planner. The claimant described the very busy periods of the sales, particularly after Christmas, and the fact that the queue would be best reduced by one job holder doing the wrapping whilst the other worked the till. Ms Law could not speak for the period before the pandemic at this store as she was not there and we regarded the claimant, who has been working the sales recently, as likely to be accurate.

PPU during sales 430

52. *The Sales start online at the same time as they start in stores. Account holder customers can order Sale goods a few days in advance to be collected from store. Parcel Pick Ups (Task J) increase during Sales. **At the busiest period of the shift the JH may typically locates around 100 parcels for pick-ups during her shift at these times.***

53. The productivity target is 111 parcels per hour. Ms Law had measured this over a recent 3-week period. One sales consultant had achieved 157 over four shifts, which would be nearly 40 parcels a shift. For the same period the claimant had done 3.

54. It is accepted that sales periods are considerably busier by up to 75%. A snapshot provided of parcel pick-ups for last Christmas and New Year was explored

in re-examination of Ms Law. That would have been 33 parcel pick-ups each, when two job holders were working the shift. The busiest periods were between 11.30am and 2.30pm when 45% of parcels were processed.

55. The claimant estimated 100 were processed by her in a shift. Assuming she worked during the busiest period we considered this was possible, but not otherwise likely.

Sales 499

56. As described in the Job Description with the additional passage: *The JH is expected to work at a pace and level of efficacy to meet targets and deadlines and may be given a lower grading on the Star Rated Review if they fail to do so.*

57. It is obvious that the job holder is required to make sales. It is a fundamental reason for her presence. Ms Law clarified that the target was not for the job holder but for the store.

Best place for stock 528b

58. *The Tasks at A, H, I J, K, L, M, T, U, V, and W largely involve working from instructions in accordance with company policies and procedures. The 14 other Tasks undertaken by the JH require her to use her initiative, and judgment, adapt her responses to the individual needs and circumstances of customers and undertake independent decisions and actions: b. deciding on the best place and method to safely file stock for Task C (72, 80), **on such occasions that the area is full or different stock arrives.***

59. Both Ms Cherry and Ms Law acknowledged in evidence that this might arise once per month and Ms Law explained that the decision would be made against the background of an alphabetical, numerical order. We accepted that evidence.

Mental effort - 541

60. As described in the Job Description.

61. We accept the evidence of Ms Cherry that the task did involve periods of a repetitive work, but these were broken with processing items of different materials. This required a slightly varied manual activity which necessitated focus and attention to avoid error and potential for injury.

Mental effort – accurate information 545

62. As described in the Job Description.

63. Whilst we recognise that a job holder could invite a customer to check their details for a home loan application, this was not obligatory and, in any event, did not detract from the need for accurate compilation in the first instance.

Team coach 350 - 363

64. As in the Job Description.

65. The parties agreed that this was not obligatory but was derived from a business need and any job holder who volunteered would discharge those duties as part of their work. To the extent that the job holder could relinquish or refuse to offer herself for such services, that is a matter which may be taken into consideration by the independent experts, as noted by Lavender J on the observations at sub-paragraph 2, paragraph 13 above.

Alison Milton

66. Ms Milton was a Sales Consultant between 1998 and November 2021 at the Bristol Cribbs Causeway store. Her fixed hours varied from 12 per week to 9 after 2020, but in fact she typically worked 18 to 30 during sales periods. Ms Milton became a key holder for the store in 2015 and a Person in Charge (PIC) in 2018.

Schematic 11 - 13

67. As described in the Schematic and in the Job description.

68. We found Ms Milton to be a reliable witness and regarded her recollection as likely to be accurate. This was largely at a time when Ms Watts was not working in the store, before December 2020 and she otherwise relied heavily on discussions she had held with her predecessor and her deputy, Martin.

Lost property 15m, 159h, 172

69. As described in the Job Description.

70. The respondents relied on three pages from a loose-leaf record sheet. A further sheet was discovered upon investigation overnight. Some of these reflected one or two items of lost property per month in, July 2018 to September 2018, five in October 2018 and seven in November 2019. The next record was a year later, for November 2018. There were significant gaps. In her evidence Ms Watts could not say whether pages had gone missing, and this was for a period when she was not at the store.

71. We regarded the claimant's evidence as likely to be accurate. She was able to provide some examples of why this stuck in her mind. Twice per month is consistent with the records produced. It is unlikely there would have been lengthy spells without any losses with very many at other times.

Post and Opening tills 21

72. The proposed respective qualifications to the Job Descriptions of "until 2018", and "until about 2018" are not opposed and we approve them.

Manual counts 32 50

73. ~~32. The JH can either manually count and key in the amount lifted or shall weigh # the amount lifted on a digital scale (which will automatically up-date the PC with the amount). If using the scales the~~ **The JH checks that the amount recorded accords with the entry. The JH manually counted and keyed in the amount lifted when the digital scale malfunctioned. Malfunctions could include the scale not weighing the particular denominations correctly or not feeding the amount lifted into the PC. Malfunctions occurred every 6 months.**

74. 50. As described in the Job Description.

75. Ms Watts said there was only a malfunction every 18 months, Ms Milton said every 6 months. As the claimant was at the store for longer and we accepted her evidence was reliable we prefer the shorter period. Although the claimant said in evidence that she always did a manual count as well as a digital count because she mistrusted the machine, that was not on instruction or required but a task taken on of her own volition. It should not be added.

Till actions – top -ups 41

76. As described in the Job Description.

77. Ms Watts said that top-ups during the day were rare and were not more frequent during the sales period because the job holder would have accounted for that when they set the till at the beginning of the day.

78. Ms Milton on the other hand said she topped up the till once per month in more recent years, but weekly previously.

79. Both witnesses are relying upon their impression without the benefit of any assessment have been undertaken. Ms Watts acknowledged that she would not be informed of top-ups and she was basing her view upon what she had observed when on the shop floor. On balance we accept what Ms Milton has said as the inconvenience of moving from one part of the store to another would stick in her mind.

Discount cards 97

80. As described in the Job Description.

81. Ms Watts said the turnover of staff was on average 5 per month. This would mean that Ms Milton's account that this was frequent is correct. Although she had not seen Ms Milton distribute the cards, that does not detract from the evidence of Ms Milton that she undertook the task.

Gift cards 100

82. As described in the Job Description.

83. Section 100 of the Job Description makes no reference to the periodic activity of this task. The Schematic characterises it as regularly, that is in a week or month. Ms Milford said it was usually weekly. Ms Watts deleted the last paragraph of her statement which commented upon this but did not advance any serious alternative. We agree regularly is the appropriate term.

PIC – opening up -123a

84. As described in the Job Description.

85. There is no reference to the level of periodic activity in the Job Description. In respect of the Schematic the activity is characterised as regularly. It should be changed to read ***regularly until December 2020 and occasionally from January 2021.***

86. Ms Milton said she undertook the task usually weekly, sometimes more frequently but sometimes less, twice per month. Ms Watts disputed this and said Ms Milton had done this only once at her request and she said her discussion with other managers confirmed this level of frequency in the past. We prefer Ms Milton's recollection of the history before Ms Watts arrived. Practices were likely to have developed between those responsible for this task, and we reject the implication Ms Milton must have fabricated this.

87. The respondents rely on wage records which triggered periodic payments for PIC duties, but these were not broken down into the respective PIC activities. We did not find these to be helpful.

88. Ms Milton was not specifically challenged about a change of practice from December 2020. We are satisfied that Ms Watts' recollection for the 11 month period from January 2021 is preferable, because she then took over direct managerial control and this was an activity of which she would be aware.

Technical know-how 123c, 130 – 134

89. Remove from the section *Task AA – Person in charge* and include under *Task Z - Admin*.

90. Ms Watts agreed that the claimant had better knowledge of these tasks because of her experience in regard to administrative duties and Ms Milton said others often turned to her given her broad understanding of such matters. This should be reattributed to Admin.

Bringing in deliveries 139

91. As described in the Job Description.

92. We accept Ms Milton's evidence that the photographs which were taken in November 2021 reflected how she typically loaded the sack truck. This had been witnessed by a number of managers and one had commended her on the loading of the truck. We reject the hearsay evidence that the same manager, who was also a health and safety officer, had not made such a remark.

93. We accept the comment of the respondents that the trucks are so heavily stacked as to create a hazard. Doubtless the working practices will have to change, but they do reflect the work that had been done by Ms Milton.

Bringing in deliveries 143

94. ~~More than 200 parcels~~ **Between 700 and 1,000 parcels arrive each day week at the JH's store and the number rises significantly in Sales periods. The JH spends typically 30 – 45 minutes each shift bringing in these deliveries depending on the delivery volume that day.**

95. Ms Milton's evidence was an estimate. Ms Watts provided the statistics for a five-month period up to December 2021 which vary from 700 to 1,000. That is to be preferred to an estimate.

Physical skills 155

96. *The loaded sack truck and rails are not light, ~~and they are both awkward to steer~~. There is limited clearance in the door between the yard and lift area, in the lift, area 1 and corridor. Area 1 in particular is full of obstacles: pallets of tubs, cartons, pump trucks, P1 crates. Safely and securely transporting the delivery of the “parcel J” stock from yard to stockroom requires good manual dexterity and hand eye co-ordination.*

97. Ms Milton accepted in cross examination that the trucks were not hard to steer. Otherwise, we accepted her evidence, particularly bearing in mind the number of sacks which were depicted as typically loaded in appendices 8 and 9.

Discharge of corporate procedures 182

98. *~~For Task AA,~~ **She** must ensure that when she ~~directs~~ **advises** ...and supports colleagues taking payment, processing refunds etc at the tills, that she is acting, at all times, in compliance with Next’s FCA credit awareness and anti-money laundering rules and principles, data protection, sale of knives, staff discounts and returns policies (details of these are at Task E of Helen Cherry’s Job Description).*

99. We accept Ms Milton’s evidence that her advice was typically sought because of her experience in administrative duties. This was not a PIC duty, so required deletion of reference to AA.

Bringing in deliveries 200

100. *The JH lifts full ~~truck~~ sacks of stock from the ground ~~and over the sack truck rails~~ into the sack truck. She lifts sacks to sit on existing sacks in the truck, **sometimes** reaching above head height to do so.*

101. Ms Milton agreed that because there were two open sides to the truck, she did not have to lift the sacks over the rails.

102. We reject the evidence of Ms Watts for the reasons set out above in respect of item 139 of the Job Description. The sacks were stacked as depicted in appendices 8 and 9 and this involved lifting above head height for Ms Milton, once the majority had been loaded.

Store condition 210

103. *Some parts of the **corridor outside the** stockroom are in a poor state of repair: in area 1 the paintwork is damaged and falling away and there is pipework across it which constantly leaks in the winter. The JH puts buckets around the area on the floor to catch leaking water.*

104. Ms Milton stated this was outside, not within, the stockroom. She provided a clear description of the leaking pipes and the reason behind the failure to repair them, because of a dispute as to who was responsible between the first respondent and the landlord of the Mall in which the store is situated. We consider it improbable that this account has been fabricated or falsely recollected. It may be that it has been repaired since Ms Milton left, which would have escaped the notice of Ms Watts, who arrived in December 2020.

Ms Amanda Cox

105. Ms Cox has worked as a Sales Consultant from 18 November 2000 at Bristol Cribbs Causeway store until 20 January 2020. He contractual fixed hours were 9 to 12 per week, but her actual hours were 35 per week.

6 Layers 43 44 75

106. ~~43. There are usually 30 tubs/cartons per pallet (6 layers of 5 containers each). The training guidelines produced by Next for this task refer to the driver removing the 6th layer of containers for the JH and her colleagues. This does not happen at the JH's store.~~

~~44. The 6th layer of tubs/cartons are removed by the JH and her colleagues in the yard. These are put to one side and then stacked directly on to the pump truck. The loaded pump truck is sent down in the lift to be received by the JH (appendix 13).~~

75 Delete all of this paragraph.

107. Ms Cox said she had never removed the sixth layer. There was a dispute as to whether it was the drivers who removed the sixth layer or one of the colleagues of Ms Cox. It is our function to decide facts in respect of the chosen lead claimants and their chosen comparators, not others who are similar or have allied duties. Ms Watts arrived 11 months later and disputed that this was a task undertaken by employees of the first respondent.

108. We are not prepared to go beyond our function of deciding this lead claimant's job. References to others or the practice at the store are therefore deleted.

Breaking down 51 and 59

109. 51. As described in the Job Description and the Schematic.

110. Ms Watts was not present when Ms Cox did this task. We accepted the evidence of Ms Cox about how frequently she did this task and used the pump truck.

111. ~~59. Typically The JH spends between 15 and 60 minutes completing Task BB, the precise duration being dependent on how many other colleagues were engaged on the task.~~

112. Ms Cox said that when there was a full team assisting this could take 15 minutes, but on her own each pallet would take up to 10 minutes. We find the numbers involved would vary.

Retail dispatch 66 and 68

113. ~~66. The pallets, cages and crates are collected from the yard by the trailer that makes the retail deliveries and by the van that delivers the Task J parcels to go back to the warehouse. The JH prepared stock, waste, graphics and fixtures and empty tubs for despatch as described every week. She used a pump truck weekly.~~

114. ~~67. Typically, the JH undertakes the Despatch task at least once per week~~ **occasionally** more in the run up and after the Sales, for 30 minutes at a time.

115. We accept the proposal for adjustment to the term 'occasional', given Ms Cox's evidence that she did this task but not as often as reflected in the respective parts of the Job Description and schematic.

Physical skills 81 and 108

116. As described in the Job Description.

117. We accepted the evidence of Ms Cox. Ms Watts conceded that the task may be more difficult for someone smaller than herself. Ms Cox was of a smaller stature. The rails are 1.8m in height and length. They were awkward for Ms Cox to retain a consistent grasp. The shorter the arm-span, the greater the challenge. Rails with clothing items such as men's suits were heavy.

Physical skills 82

118. As described in the Job Description but with deletion of *briskly*, which the parties agreed.

119. The remaining point of objection in the final schedule is not material in the light of this agreed amendment.

Mental pressure 114

120. As described in the Job Description.

121. We accept paragraph 22 of the statement of the claimant and the knowledge that any tardiness in fulfilling this task would have a knock-on effect to the efficient processing of stock.

The comparators

Andrejs Zale

122. Mr Zale is a warehouse operative at Dearne Valley Boxed (DVB). He has worked for the second respondent since 28 August 2015. His fixed contractual hours are 16 to 40 per week

Bonus issue /BS 85 issue 7.1.1.34

123. ~~The job Holder is expected~~ **required** to cut open approximately ~~850~~ **620** boxes per in **a 4 hour** shift. ~~This target creates mental pressure on the job Holder.~~

124. Mr Jones agreed that the minimum number of boxes required to meet British Standard 85 would be 620 or 698 in a typical 4 or 4.5 hour shift respectively. Issues of the impact of the job, physically or mentally are more suitably addressed in later parts of the Job Description. We do not regard the 95% rate used for planning as helpful. This factors in stoppages. The requirement is based on an average. It does not reflect any greater productivity which might generate a bonus. The Job Description should reflect the obligation.

The lonely environment/noise issue 7.1.1.47 / 7.2.1.40 / 7.1.44 / 9.13.3.1 / 9.13.3(g) / 9.13.3.3(d) / 9.14.2

125. Delete and replace with: *The DVB comparators are able to chat (although not hold lengthy conversations) while carrying out their tasks. Although this is made more difficult by the background noise, particularly if there is no-one at an adjacent work station or more recently by Covid screens, they will be able to speak to others when they come into contact with them in the course of moving around their workstations or beyond, during blockages and during breaks.*

Stoppages – impact on bonus – stress for JH 7.3.1.39

126. Delete

127. We do not find the requirement to earn a bonus was stressful. Mr Jones agreed that the ODS planning figure included a 5% stoppage allowance. That was the average. He agreed the majority on site achieved 100% bonus. There was no evidence that the production line was frequently disturbed by stoppages adversely to affect the bonus. Moreover if there were fewer than 5% stoppages it would be easier to achieve a bonus. Finally the evidence of Mr Zale was “for me it’s not hard”.

Resting between stoppages 7.3.1.40

128. *Technical issues can occur, however even when there are stoppages, the JH is continually **will** be able to perform another task, whether it be housekeeping in the workstation, or making up additional pizza trays if the Job Holder decides they need more; the Job Holder must ~~autonomously~~ make this assessment based on the size of the items that the Job Holder is processing; **or the Job Holder may rest if he has no work or there is a stoppage.***

129. The alterations reflect the evidence. Mr Zale said he would relax if there was a blockage, or no work and he was always on target. The word autonomously is otiose. The wording says it is the Job Holder not anyone else who makes the assessment.

Bonus pressure – no work 7.3.1.45

130. Delete

131. Insofar as it may arise, there is no obligation to work at such a level as to generate a bonus and so it is not a requirement of the job. Any pressure to meet it would be at the election of the Job holder. In any event Mr Zale always received his bonus and it was not hard for him.

The bonus/85 issue 7.3.1.46

132. *For SCS Picking, ~~in Autumn and Winter~~, the Job Holder is **required to work to BS85, accurately and at a reasonable speed. To achieve bonus rates the Job Holder would be** expected to work quickly and accurately in order to process between 550 to 600 items per hour **in Autumn and Winter**, ~~to achieve their bonus~~, and in Spring and Summer ~~the Job Holder is expected to work quickly and accurately in order to process between 800 and 900 items per hour to achieve their bonus.~~*

133. In cross examination Mr Jones agreed that the requirement on which production was based on BS 85 and that the wording in the job specification for that and in the collective agreements refers to accuracy and reasonable speed. We recognise that a higher rate will be involved for achieving a bonus, but the differential in pace is not

clear from the evidence, given the remarks we have made in our general observations about bonus. We consider this part of the job description should include reference to the requirement of the minimum as well as the expectation and the minimum should use the term referred to in the job specification. Quickly has been deleted. It is implicit that an adjusted pace would be required to meet bonus levels, but it is not necessary or even possible to quantify that.

The Bonus / BS 85 Issue

134. ~~This creates physical demand on the Job Holder as required by the O&M department~~ That is at a comfortable speed neither briskly nor with much effort, as defined by BS 85.

135. Mr Jones agreed that the minimum standard was calculated in accordance with BS 85 and that this industrial standard used the above description. Given that Mr Zale did not consider meeting his bonus performance required much effort, this wording is more appropriate.

Bonus pressure 9.13.2.1

136. Delete

137. This is not borne out on the evidence. It is contrary to what Mr Zale said. Mr Jones said that a worker would not be aware of his productivity rate unless he asked, in which case it would not be possible to distinguish when the minimum requirement was reached or the bonus optimum level was achieved.

Steven Oliver

138. Mr Oliver has worked as a warehouse operative at DVB from 15 April 2002. He works for 20 hours per week.

Lack of stimulation 7.2.1.40

139. Delete

140. The evidence of Mr Jones was that in a short pause on allocated tasks the job holder might find alternative work or chat to a colleague. We do not regard *lack of stimulation* as properly included as an accurate description of such short stoppages and it should be deleted.

The SLO issue 9.2.3

141. *SO is fully trained in the following operations/duties, having received 16 hours' training on each operation/duty: (h) Process Stock Left (SLO). **The JH has not done SLO at any point of the reference period.***

142. This is part of Mr Oliver's duties and he could be called upon to discharge them, but its infrequency is a matter to which the independent experts may have regard.

Bonus pressure & the bonus issue/ BS 85 Issue 9.14.2.1

143. Delete

144. This is not borne out on the evidence. Mr Oliver did not agree he was always under pressure and for some tasks it was easier than others. Mr Jones said that a worker would not be aware of his productivity rate unless he asked, in which case it would not be possible to distinguish when the minimum requirement was reached or the bonus optimum level was achieved. It is difficult to see how that could be described as a pressure.

Richard Parker

145. Mr Parker is a warehouse operative who is based at the Elmsall complex in Pontefract. He has been employed by the second respondent since 31 October 2015.

Place of work 2.1.

146. *The Job Holder has worked as a warehouse operative at Elmsall **Drive** during the period covered by the job description but **may be required to work at Elmsall Way.***

147. Mr Naylor agreed in cross examination that Mr Parker had worked at the Elmsall Drive site since 2012, but under his terms of engagement it would be open to the second respondent to require him to work at Elmsall Way.

Alternating tasks 4.1.3

148. *The Job Holder normally sticks to one operation / process **of packing** for the whole of their shift unless their Team Manager advises them ~~otherwise~~ **to carry out inducting in addition which may take up to two hours.***

149. There is a dispute as to the precise wording to be substituted, but we are not satisfied whichever is chosen materially affects the exercise of job evaluation. Mr Naylor said that sometimes Mr Parker spent the whole day packing. At other times he might be required to do up to 2 hours of inducting.

Space 7.1.4

150. *The Job Holder's workstation is located on a raised platform, suspended approximately 1.8m above the warehouse floor. The area of the workstation the Job Holder works in is relatively ~~small and~~ confined, measuring approximately 1.49m by 1.14m. Photographs of the workstation are at appendix 5.*

151. Mr Naylor agreed that the space was adequate for the purpose of the required task. We did not regard it as unduly restrictive from the photograph at appendix 5. The word small lacks clarity and combined with the term confined implies it is deleterious, which is not a fair reflection of the evidence.

Sifting 7.1.9

152. *The Job Holder is required to ~~sift through~~ **take** the items which arrive at the workstation, and "induct" them into the system for onward transportation in the warehouse, via a large conveyor belt system. They do this by lifting each item out of the dump chute tray, locating the item's barcode, and scanning the barcode using one of two barcode scanners located at the inducting workstation. **Occasionally the JH***

will need to remove a stock item from the chute to the induct station if it's stopping the flow of stock.

153. Mr Naylor agreed that most of the time the job holder will pick up an item, but occasionally the job holder will have to move a large item such as a shoe box to avoid it blocking the flow. The wording proposed by the claimants more accurately reflects the process.

Consideration 7.1.12

154. *When inducting items, the Job Holder must ~~give careful consideration~~ **take care** in the way items are placed onto the onward conveyor belt system, once they are scanned.*

155. Mr Naylor agreed that if a job holder had to identify the next item there has to be care taken in that placement. The accuracy rate was 99.3%. We agree with the claimants' proposed wording and that 'careful consideration' overstates the matter.

Autonomy and white trays 7.1.18

156. *For smaller items (e.g., jewellery and rolled-up jeans), before placing the items onto the onward conveyor system, the Job Holder is required to make an ~~autonomous~~ assessment as to whether the items need to be placed into a white tray, so as to ensure the items do not get caught up in the conveyor belt and lead to jams. A photograph of the white tray is at appendix 9.*

157. The addition of the word autonomous over-emphasises the complexity of the decision-making process.

The bonus issue/ BS 85 issue 7.1.27

158. *The Job Holder is expected to induct approximately 1,000 items per hour in order to meet their targets and achieve their bonus. This means the Job Holder is working at a ~~near~~ constant ~~fast~~-pace in order to achieve this.*

159. The term *fast* is unhelpful because it is a relative concept. In his interview Mr Parker said it was difficult to compare to others, but he thought it was faster than a supermarket conveyor belt. Otherwise we approve the above as a reflection of what the Job Holder did.

The actual work issue 7.1.43

160. The Job Holder might be required to perform "inducting", **typically for not more than two hours** ~~for the entirety of a shift~~ at busier times, or when it is quieter, as soon as the Job Holder has finished their workload, they might be required to perform another operation / process around the warehouse.

161. This accords with what Mr Naylor said in evidence and Mr Parker in interview.

The bonus/ BS 48 issue 7.1.67 4329

162. *The Job Holder must ~~continuously~~ multi-task between inducting, minding the dump chute, and manually sorting rejected totes. This multi-tasking ultimately slows*

the Job Holder down from inducting the required amount of items to meet their bonus target. ~~, which causes additional stress and pressure when performing this task.~~

163. Mr Naylor agreed that it was only on the dump chute that he would have to reject totes manually, which eliminates the suitability of the word continuously.

164. The issue of mental pressure in respect of bonus is one that we agree should not be included. For the reasons we have set out in our general findings above, it is not identifiable from the evidence; even if it were we would comment that it would be generated by a desire to achieve an incentive rather than meet an obligation.

Autonomy 7.2.8

165. *If an item which is scanned is a single item, it is immediately ready to be "packed". The touchscreen PC will prompt the Job Holder when items are single-order items. The Job Holder then ~~autonomously~~ determines which size bag they need to use to pack the item in.*

166. The addition of the word autonomous overstates the complexity of the decision-making process.

Initiative 7.2.11

167. *For even larger items, the Job Holder **decides whether to** ~~uses their own initiative and packages the item using two "Home" bags to securely package it.~~*

168. This is a more suitable use of language which more realistically explains what is done.

Consideration and analysis 7.2.35

169. *The Job Holder must ~~give careful consideration as to~~ **look at** the items they are scanning. The packing workstations work in alternative batches ("odd" and "even"). Stock will continue to arrive to the workstation via dump chutes, however the Job Holder will need to ~~analyse~~ **check** the information provided by the touchscreen PC, and the labels which are printed when processing stock, to determine when the next batch of stock has arrived.*

170. Careful consideration is an overstatement of what is done. The above wording more accurately suits the task.

Garden snails 7.2.56

171. *~~When collecting the sacks large bags, T~~the Job Holder could **on occasion** encounter ~~one of a number of hazards and / or unpleasant situations. Such situations include discovering dead animals, slugs and snails' remnants of blood, faecal or urine matter and dead invertebrates in or on the sacks which they collect.~~*

172. Mr Parker once found snails. Mr Naylor said blood, faecal and urine had been found. The above more accurately states the problem.

Injury to the job holder 7.2.63

173. *The Job Holder must also be alive to health and safety when performing this task. ~~It is not uncommon for~~ The Job Holder ~~to~~ **might** hit his head, or catch his hands, in the pigeonhole racking, **but the use of gloves and general precautions minimise any risk.***

174. Although it was accepted Mr Parker had never sustained an injury, Mr Naylor explained that others had, on average once a year and the introduction of a gloves mandate had reduced finger injuries.

The actual work issue 8.2.2.1 (There are two passages with this number. We include both below).

175. *The Job Holder can be required to undertake refresher training, if they fail to meet certain criteria based on the individual's bonus rates.*

For each task that the Job Holder is transferred to, for which they are not trained, the Job Holder receives a minimum of 16 hours training which is delivered by an in-person team / training coach, via a tablet device.

176. We do not consider these to be in dispute on the evidence.

The actual work issue 8.4.3

177. *Training guidelines and / or risk assessment for each of the tasks the Job Holder typically performs or has performed within the relevant period, ~~including those which are performed by others in their~~ **JH's** role as a "warehouse operative", are at appendix 32.*

178. Our task concerns the work of this comparator, not others.

Working knowledge of stock 8.5.3

179. *A working knowledge of stock also allows the Job Holder to ~~autonomously~~ assess how long certain tasks will take.*

180. As amended the above satisfactorily encompasses such matters as how much work will be left to process after the infeed is switched off.

The actual work issue 8.6.1

181. ***Although the Job Holder has only been required to undertake two tasks, picking and inducting, throughout the whole of the reference period** ~~For all tasks,~~ the Job Holder is required to maintain a level of flexibility in that they may be asked to perform additional operations / processes to which they were not allocated, based on the demands of the warehouse, provided that they have been adequately trained and are not subject to restrictions*

182. The independent experts may give such as weight as is appropriate to what has happened in practice.

Injury to the Job Holder 8.8.4.1.c

183. *The Job Holder must be aware of the Health and Safety implications of lifting and carrying as well as using the pigeon hole racking which can be sharp. ~~It is not uncommon for~~The Job Holder ~~to~~ might hit his head, hand, and legs on the pigeon hole racking around him, which can lead to bruising, cuts and scratches **but the use of gloves and general precautions minimise any risk.***

184. Mr Parker has never injured himself and so this should read as above. We accept that there are risks but reasonable care avoids them.

The bonus issue 8.12.1

185. *For all tasks, the Job Holder is expected to work accurately and at a reasonable speed, with standards set by the O&M Department, which is reviewed on a periodic basis. ~~This creates physical demand on the Job Holder as required by the O&M Department.~~*

186. Mr Parker said that more often than not he met his target for his bonus. The evidence does not support a reference to physical demand.

Tiring process 8.12.2.5

187. *~~This is a tiring process for the Job Holder, and requires significant amounts of walking, bending, and concentration. This is particularly due to the distance the Job Holder could cover in completing this element of the task, which~~ This **task** can involve the Job Holder walking several meters (typically 10 – 15 metres, though sometimes this could be as far as 40-50m depending on which workstation the Job Holder is located at and which Packing workstation they need to walk to) to and from their workstation to retrieve them.*

188. There is no evidence Mr Parker found this tiring.

The bonus issue 8.12.2.9

189. *The Job Holder must ensure he inducts ~~items at a significant speed in order to ensure he inducts~~ 1,000 items per hour.*

190. The additional words are unnecessary and do not provide any additional useful information about the physical effort, under which topic this falls.

Physical exhaustion 8.12.2.10

191. *In circumstances where the Job Holder is required to induct items, mind the dump chute, and manually sort rejected totes, the Job Holder produces a significant amount of sweat performing these duties ~~and is physically exhausted at the end of each shift,~~ more so where he has not been able to alleviate some of the labour-intensive tasks through the use of a trolley.*

192. There was no evidence Mr Parker was physically exhausted at the end of his shift. He said he did not feel it hurt until he got home and described an ache rather than exhaustion.

Weight of stock 8.12.2.10(a)

193. The weight of the stock the Job Holder inducts **includes items such as curtains and duvet sets which** ~~can be significant, and~~ can require the Job Holder to hold items with both hands, and in many cases his forearms as well given the difficulty in manoeuvring them. This can cause friction and strain on the Job Holder's arms and muscles.

194. There is no evidence about the actual weights raised. The term significant is therefore not informative. We agree the wording proposed by the claimants.

Physical symptoms of the JH 8.12.2.12

195. In performing this task, the Job Holder ~~regularly~~ **may** experiences symptoms including ~~muscle strain, headaches, severe tiredness, exhaustion, aching, in particular in his hands. (particularly in the neck, legs, back and shoulders), which last for a couple of hours following the end of each shift.~~

196. The only evidence of Mr Parker is that he had aches in his hands and some general aches when he was at home.

Physical symptoms and pure adrenaline 8.12.2.13

197. ~~By the next morning, the Job Holder is usually ready to resume the task without experiencing the after effects of the symptoms described above, though at the point of resuming the task he is driven by pure adrenaline to complete the task in a timely manner.~~

198. We agree with the claimants that there is no evidence to support the words suggested.

Temperature at Elmsall Drive 8.12.2.15

199. The temperature of the area in which the task of Inducting is performed can also be particularly hot, as both the machinery and the actions performed by the Job Holder generates a significant amount of heat. This is further protracted by the fact the induct stations are suspended above the ground floor, and are therefore naturally closer to the ceiling. **When the temperature rises above 27 degrees the JH is entitled to a heat allowance.**

It was agreed that there was an entitlement to a heat allowance over 27 degrees. No cogent argument was advanced as to why this would not be a material factor.

Physical demands 8.12.3.5

200. ~~Whilst packing items, the Job Holder's hands become sweaty produces a significant amount of sweat performing these duties and is physically exhausted at the end of each shift. This is even more so where the Job Holder is required to pack very large items, which might be awkward to pack and may need to be packaged using two "Home" bags to securely package it.~~

201. This is consistent with the evidence of Mr Parker's interview. There was no evidence Mr Parker was physically exhausted at the end of his shift. He said he did not feel it hurt until he got home. This is a description of an ache rather than exhaustion.

Weight of sacks 8.12.3.8

202. *Once a sack of completed parcels is full, the Job Holder must lift **or drag** and transport ~~very heavy~~ sacks (up to, **and occasionally in excess of**, 15kg) to the hanging carousel for onward distribution. He does this approximately 4-5 times per hour*

203. We accept the submission that the subjectivity of the term 'very heavy' is unhelpful and the experts should focus on the weight. Mr Naylor said that some legacy packaging could be over 15kg, which we accept, but the weighing system did not record it. Mr Parker said in interview that he pulled the sacks along the floor in keeping with his manual handling training.

Physical symptoms of the JH 8.12.3.10

204. *In performing this task, the Job Holder regularly experiences symptoms including muscle strain, **and headaches**, ~~severe tiredness, exhaustion, aching. (particularly in the neck, legs, back and shoulders), which last for a couple of hours following the end of each shift.~~*

205. This more accurately reflects what Mr Parker said in interview, although that was very succinct and not explored in any detail. At paragraph 92 of his witness statement Mr Naylor said he had experienced all of the symptoms, by reference to the original proposal for the Job Description. We do not regard such general and undetailed observations of what he undertook some time ago as very helpful when reducing this to an accurate expression of the physical demands of this part of the job.

Sack condition 8.13.2.11

206. *When collecting sacks for completed orders, the Job Holder could encounter unpleasant situations. ~~This can be particularly hard-hitting and mentally challenging for the Job Holder.~~*

207. For the same reasons in paragraph 172 above, we do not consider the last sentence is accurate.

The bonus issue/ BS 85 8.14.1

208. *For all tasks, the Job Holder is expected to work accurately and at a reasonable speed, with standards set by the O&M Department, which is reviewed on a periodic basis. ~~This creates mental pressure on the Job Holder to perform their work accurately and reasonably quickly.~~*

209. We do not regard that the evidence, in context, supports mental pressure. When asked in interview, Mr Parker did not suggest this aspect of his work created pressure.

210. The claimants invite us to add reference to the bonus rate, but we do not regard that as necessary.

Temperature at Elmsall Drive 8.15.1.19

211. *For some tasks located on some floors of the warehouse, in the Summer, the area of the warehouse in which tasks take place becomes very hot. This is the case for both the Inducting and Packing tasks carried out by the Job Holder. **When the temperature rises above 27 degrees the JH is entitled to a heat allowance.***

212. We repeat paragraph 200.

Temperature at Elmsall Way 8.15.1.20

213. ~~*A temperature log showing average temperatures in each part of the warehouse during the Summer is at appendix 36.*~~

214. This has no relevance to the demands of the job.

Calvin Hazelhurst

215. Mr Hazelhurst works at the Elmsall complex. He has been employed by the second respondent since 25 September 2011.

The actual work issue 4.1.4

216. *For instance, if an operation / process is very busy and requires more warehouse operatives to assist with it, provided the Job Holder is trained on that operation / process, the Job Holder might be asked by their Team Manager to stop carrying out their allocated operation / process and move to the operation / process that required more warehouse operatives to assist.*

217. This does not require amendment but is understood in the context of Mr Hazelhurst only having worked in packing and inducting and so, although he theoretically could be called upon under his contractual obligations to change to other tasks, in practice that has not occurred.

Packing 7.1 to 7.1.66

218. The Job Description shall be amended or altered as that of Richard Parker above for the common tasks.

The bonus / BS 85 issue 7.2.48

219. Delete all: ~~*An individual bonus scheme is in place creating competition between warehouse operatives to complete pick lists.*~~

220. There is no evidence that there was any enhanced payment for the highest performer, thereby generating competition between Job Holders.

The bonus / BS 85 issue 7.2.56

221. *If dealing purely with returns, the Job Holder is expected to pick approximately 90-160 items of stock per hour depending on the zone within which the Holder carries out the task, which equates to approximately 60 [30-40] totes stock being filled.*

222. No alteration is required, but this is a figure used for planning purposes.

Stock knowledge 7.3.18

223. *The Job Holder performs a visual check to autonomously assess which items can fit into each of the BDCs; there is no set item of stock that the Job Holder must place into each BDC. This is decided purely by the Job Holder based on space available in each of the BDCs. ~~The Job Holder therefore needs good knowledge of each of the stock they are dealing with in order to understand their size and whether they will fit in the relevant BDC.~~ A photograph showing the mix of items in a BDC is at appendix 30.*

224. This task requires only knowledge about the size of the stock, not any other detailed knowledge of it. Mr Naylor agreed.

Health and safety risks 7.3.32

225. *The Job Holder needs to be aware of the Health and Safety risks associated with working in a congested and of working in a narrow area with other Warehouse Operatives and trolleys in the Putaway area. Trips and slips could occur if the Job Holder fails to wait for other Warehouse Operatives to pass.*

226. We agree with the proposed, simpler wording, but consider a brief illustration of the risks does add some meaning and should be retained. Mr Naylor said that the congestion caused the safety risk, but this is self evident from the above.

The actual work issue 8.2.2.1

227. *If the Job Holder is to be transferred to a task for which they are not trained, they will receive training in relation to this new task, before being deemed competent to carry out the task independently, without the need for supervision.*

228. There is nothing objectional in this paragraph and it requires no qualification.

Primary tasks and frequency 8.2.3

229. *Although ~~t~~The Job Holder's primary tasks performed are Packing, Picking, Putaway (Returns), and Bulk Picking (when this task is "active" in the warehouse), the Job Holder has historically performed the task of "Inducting" Packing for a short period in 2014 (see "Richard Parker's" Job Description for a description of this task).*

230. When this was raised in the interview Mr Hazelhurst said he had done a couple of weeks of packing in 2014 and on one occasion during the Covid pandemic. This interviewer referred to a record held but Mr Naylor said his record showed inducting. On balance we accept what Mr Hazelhurst said. Although not invited, this necessitates a deletion of Packing as a primary task, because it was done only twice.

The actual work issue 8.4.3

231. *Training guidelines and / or risk assessment for each of the tasks the Job Holder typically performs or has performed within the relevant period, ~~including those which are performed by others in their role as a "warehouse operative",~~ are at appendix 34.*

232. Our task concerns the work of this comparator, not others.

Working knowledge of stock 8.5.1

233. *The Job Holder **must safely and appropriately process stock. He must look at the size of the stock before choosing where to put it.** ~~is required to have a working knowledge of stock. This enables them to autonomously assess how to safely and appropriately process certain items.~~*

234. The evidence of Mr Naylor was that the Job Holder would need to know where to place the stock on the shelves and have an understanding of how it was boxed, such as if it was padded. There was no evidence this required any more detailed knowledge of the stock to discharge picking or putaway duties.

The actual work issue 8.6

235. ***Although the Job Holder has only been required to undertake Picking and Putaway, and for two short occasions Packing, throughout the whole of the reference period** ~~for all tasks,~~ the Job Holder is required to maintain a level of flexibility in that they may be asked to perform additional operations / processes to which they were not allocated, based on the demands of the warehouse, provided that they have been adequately trained and are not subject to restrictions.*

236. In practice Mr Hazelhurst has done almost exclusively Pick and Putaway, but the claimants have not established, as they first suggested, that the respondents could not change the Job Holders' duty. To the extent that this entry implies flexibility is commonplace it is incorrect.

Collisions in the picking aisle 8.3.4(b)

237. *In manoeuvring the trolley, the Job Holder must be careful not to collide with other warehouse operatives and/or hit their shins on the trolley, which ~~is not uncommon~~ may be weekly. **The Picking aisles are one-way only to minimise the risk of collisions.***

238. Mr Naylor said this could happen once per week. Mr Hazelhurst did not suffer any such injury, but we accept what Mr Naylor said.

The bonus / BS issue 8.9.1

239. *For all tasks, the Job Holder is expected to work accurately and at a reasonable speed, with standards set by the O&M Department, which is reviewed on a periodic basis.*

240. This is an accurate description, but the standards are set for planning purposes.

The bonus / BS issue 8.9.3.1

241. ~~8.9.3.1 For all tasks, the Job Holder is continuously under pressure to reach their bonus target (comprising either individual or group performance standards which are required to be met in order to achieve their bonus target).~~

~~8.9.3.1 Bonus performance standards are fixed across the board for all tasks. The amount of bonus paid to the Job Holder correlates to the Job Holder's utilisation.~~

~~8.9.3.4 85% performance is the minimum expected of the warehouse operatives. Bonus payments are paid to the Job Holder when the Job Holder reaches 90% performance or above.~~

~~8.9.3.5 If the Job Holder continues to fail to reach their bonus targets, they will be subject to an investigation, and if necessary, take part in a disciplinary process.~~

~~8.9.3.6 Further underperformance could lead to a further investigation meeting, disciplinary meeting and ultimately could lead to dismissal.~~

242. This is addressed in paragraph 27 of the witness statement of Mr Naylor. He was not cross examined upon it. He does not refer to bonus being triggered from a performance rate of 90% but said that, at one point historically, bonus started at 85%. He did not say at what point bonus is now generated. He said the issue of the pace at which a worker operates, and bonus is achieved were indivisible and that all that could really be established is that if the Job Holder worked as hard as he could he would maximise his bonus potential. He confirmed that they planned to a figure of 95%. We do not regard this evidence as establishing the Job Holder is continuously under pressure to meet their bonus, not least because the worker does not know to what level they are working.

243. There is no evidence from Mr Hazelhurst of pressure. There is no evidence of any performance management of a Job Holder who failed to achieve a bonus.

244. The only reliable approach is to delete these passages in their entirety, because they are not an accurate analysis of the demand mentally of working to achieve the bonus. There is no evidence about performance management or disciplinary action for failing to meet the bonus target, as suggested.

Temperature in packing area 8.10.1.19

245. *For some tasks located on some floors of the warehouse, in the Summer, the area of the warehouse in which tasks take place becomes very hot. This is the case for [both] the [Inducting and] Packing tasks carried out by the Job Holder.*

246. We do not consider the word very adds anything to the word hot, which will be construed differently by different people. It is safer to use figures of Celsius or Fahrenheit. There is no need to identify the tasks.

Employment Judge D N Jones

Date: 5 August 2022