EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: 4102990/2023**

Final Hearing
In Glasgow on 13 and 16 November
and 13 and 14 December 2023,
10 **members meeting on 8 January 2024**

Employment Judge A Jones
Tribunal Member N Elliot
15 **Tribunal Member G McKay**

Mr T Glenn	**Claimant** **Represented by:** **Mr W McParland,** 20 **solicitor**
Blue Machinery (Scotland) Ltd	**First Respondent** **Represented by:** 25 **Mr D Milne, counsel** **Instructed by BTO solicitors**
30 **Austin Carey**	**Second Respondent** **Represented by** **Mr D Milne, counsel** **Instructed by BTO solicitors**

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JUDGMENT

The unanimous decision of the Tribunal is that:

1. The claimant was unfairly dismissed by the first respondent.

2. The first respondent discriminated against the claimant in terms of section 13 Equality Act 2010 because of the protected characteristic of disability by dismissing him.

3. The claimant was not harassed because of a protected characteristic.

5 4. The claimant was not directly discriminated against because of the protected characteristic of age.

The first respondent is ordered to pay to the claimant compensation of £12,331.26 being the sum of £276.05 as compensation for loss of earnings, £500 in respect of loss of statutory rights and the sum of £9500 as injury to feelings for discriminating
10 against the claimant, all subject to an uplift of 20% because of the failure of the respondents to follow the ACAS Code of Practice.

REASONS

INTRODUCTION

1. The claimant lodged a claim on 18 May 2023 claiming that he had been
15 unfairly dismissed by the first respondent and had been discriminated against on the grounds of age and disability by the first and/or second respondent.

2. The first respondent's primary position was that the claimant's employment ended by agreement and that if the claimant's employment had been terminated, it had been terminated for some other substantial reason in that
20 the terms on which his employment would terminate had been agreed with the claimant. A further alterative position was taken that if the claimant had been dismissed his dismissal was by reason of capability, although the first respondent no longer insisted on that position by the conclusion of the hearing.

25 3. Both respondents denied that they had discriminated against the claimant because of a protected characteristic. Both respondents denied that they had perceived the claimant to have had a disability at the material time.

4. The claimant gave evidence on his own account and the respondents led evidence from Ms Mandy Dawson ('MD') who was the claimant's line

manager, Ms Hannah France ('HF') who is the Group Health and Safety Manager employed by the first respondent, Mr Roddy Wilson ('RW') who is the first respondent's finance manager and Mr Austin Carey ('R2').

5. A joint bundle of documents was lodged and a list of issues agreed in advance of the hearing. Counsel for the respondents provided written submissions and the claimant's solicitor made oral submissions.

Issues to determine

6. In summary, the Tribunal was required to determine the following issues:

   a. Was the claimant dismissed or was his employment terminated by mutual agreement and if the claimant was dismissed what was the reason for that dismissal?

   b. Did R1 and/orR2 perceive the claimant to have a disability at the material time and if so, did either subject the claimant to less favourable treatment on that basis.

   c. Did R1 and/or R2 treat the claimant less favourably because of his age?

   d. Did R1 and/or R2 subject the claimant to unwanted treatment which amounted to harassment in terms of section 27 Equality related to either the protected characteristic of age, and/or disability?

Findings in fact

7. Having considered the evidence heard, the documents to which reference was made and the submissions of the parties, the Tribunal made the following findings in fact.

8. The claimant commenced employment with the first respondent ('R1') on 29 July 2005. He was employed as a service engineer. He signed a statement of terms and conditions 17 July 2015.

9. R1 is involved in the supply, installation and maintenance of heavy machinery. The second respondent ('R2') is the majority shareholder and managing director of R1.

10. The claimant's role was a physical one which required driving to clients' sites to install or maintain machinery. The claimant was based at the depot at Stirling.

11. At the time of the termination of his employment, the claimant was 63 years old.

12. The claimant suffered an accident at work on 5 February 2021. He attended hospital for treatment in relation to the injuries suffered by him which involved back pain.

13. The claimant filled in an accident record at the time, but there was no health and safety risk assessment or investigation carried out at the time in relation to the accident.

14. When HF commenced employment with R1 in April 2021, she sought to introduce new health and safety procedures. All staff were sent an Occupational Health Questionnaire to complete.

15. The claimant completed this questionnaire on 24 June 2021 and gave details of treatment he was still undergoing in relation to the accident at work in February.

16. HF carried out a retrospective investigation of the claimant's accident in February 2021 and did not involve the claimant in the completion of that document or show it to him.

17. HF followed up on the content of the questionnaire completed by the claimant by email of 25 June to him and then made arrangements to meet him on 28 July to discuss a risk assessment to take account of his back condition. The assessment noted that it should be reviewed every 6 months or sooner if something changed.

18. A review took place on 23 March 2022 and then again on 29 June 2022. The reviews noted that the claimant was not taking medication at the time but that he was still in pain and was seeing a physiotherapist three times a month at his own expense. It was noted that MD would try to minimise the claimant's driving and there was some discussion of the claimant reducing his hours at the meeting on 29 June.

19. The claimant had a further accident at work on 10 August 2022. The claimant suffered injury overstretching his back when he was assisting with the loading of a lorry. The claimant was off work for 2 weeks as a result of the injury.

20. An investigation was carried out into the accident, but this was not shown to the claimant. The investigation paperwork noted that "Tommy sustained a back injury from overstretching. This is possibly a worsening of his ongoing back injury for which he has been receiving physio therapy and work form a person specific risk assessment."

21. On his return to work on 30 August 2022, the claimant indicated that he was not taking medication but that he kept painkillers with him in case of emergency. The claimant reduced his hours from 50 hours a week to 40 hours a week at this time. He returned to work mainly in the workshop to accommodate his condition.

22. At no point was the claimant sent for an occupational health assessment, nor was any information sought from his GP regarding his fitness to work. R1 was aware from March 2021 at the latest that the claimant regularly attended physiotherapy appointments for his back.

23. The risk assessment which was carried out on the claimant's return to work was said to be updated every month.

24. MD sent the claimant a letter dated 31 August confirming the reduction of his hours and noting that this was a temporary arrangement until 31 October when the situation would be reviewed.

25. From this time, the claimant worked mainly in the yard doing limited driving, painting and moving around machinery. He was carrying out meaningful work and worked overtime hours.

26. Around 25 September 2022 some damage was caused in the yard. MD sent an email asking the claimant 'what's the story with the damage below'? and enclosed a picture. The claimant replied by saying 'No idea!!'. The matter was not raised further with the claimant and there was no investigation carried out into the cause of the damage. R1 assumed that the claimant was responsible for causing the damage.

27. A review was carried out of the claimant's risk assessment on 28 September. the claimant met with MD and remotely with HF regarding this review. The claimant indicated that he was taking co-codamol on and off. He also said that he was not taking the medication at work and only at weekends.

28. The claimant was on leave for 2 weeks at the beginning of October.

29. On 3 November another member of staff had a discussion with MD when he raised concerns regarding the claimant's driving. No one made the claimant aware that any concerns had been raised or discussed these matters with the claimant. However, MD sent HF an email informing her of the concerns and noting that they thought that if the claimant was still taking painkillers this may be affecting his judgment when driving.

30. A meeting took place between MD, HF and the claimant on 3 November. The claimant indicated that he had stopped taking painkillers in the last couple of months and that he was still attending the physio. HF attended this meeting remotely and it was agreed that an in-person meeting would take place on 11 November.

31. The claimant continued to work on the basis of his restricted duties from this date until the end of his employment and regularly worked overtime.

32. The claimant's intention was to return to full working hours following the meeting which was scheduled for 11 November.

33. On 11 November a meeting took place in Stirling between MD, HF and R2. At that meeting the claimant's condition was discussed. Concerns were raised by MD and HF regarding how the claimant's condition was impacting upon his ability to carry out his duties and they expressed the view that this was going to get worse.

34. Having been apprised of the health issues of the claimant, R2 decided that the claimant's employment should be terminated.

35. During that meeting, MD phoned the claimant in the yard and asked him to come to the board room. The claimant had expected to meet HF and MD to discuss his risk assessment and return to full duties. However, the claimant instead met with R2.

36. During a short meeting between the claimant and R2, R2 asked how the claimant's health was as he had heard it was not too good. R2 also asked the claimant whether he was thinking of retiring. R2 then informed the claimant that he had been selected for redundancy. R2 informed the claimant that he did not yet know what sums the claimant would be entitled to, but that RW was working on this he would get back to him.

37. R2 then had a discussion with RW and asked him to calculate what the claimant would be entitled to be paid if he were to be made redundant. RW emailed information which he had obtained from the government website on 14 November to R2.

38. The claimant had a further meeting with R2 on 18 November at which he was given a printout of his statutory redundancy entitlement taken from the government website.

39. The claimant was also given a copy of the risk assessment documentation which had been completed by HF on 18 November. He was handed this document by MD. The document noted in an entry dated 18/11/22 that "Tommy is leaving the business at the end of the year. Between now and then he will remain on this risk assessment as per the last review. If anything changes the risk assessment will be reviewed again."

40. The claimant then met with RW on 20 December when they discussed the possibility of the claimant purchasing a van from R1. The terms on which the van might be purchased were discussed.

41. The claimant met with RW again on 22 December when the basis of his purchase of the van was agreed. RW handed the claimant a letter dated 12 December which purported to have been signed by R2 which made reference to the claimant being dismissed by reason of redundancy with effect from 30 December. The letter also stated "Further to our meeting on 11 November 2022 in which your role was placed at risk of redundancy, and your subsequent consultation meeting on 18 November 2022 we met once again on 25 November 2022 for a formal end of consultation meeting. As you are aware the purpose of the meetings was to give you further opportunity to raise any questions regarding the proposed redundancy or put forward any suggestions that you felt might mitigate the risk of redundancy. In our meeting on 25 November, I confirmed that as no proposals had been put forward to prevent redundancies, that your employment would end for reason for redundancy." The letter went on to provide that if the claimant wished to appeal against the decision this would be passed 'to an appropriate manager'. No meeting had taken place on 25 November and there had been no consultation with the claimant regarding a potential redundancy situation. The redundancy process was a sham.

42. The claimant had tested positive for covid on 22 December and left work early that day. He did not return to work. He did not appeal against his dismissal.

43. The claimant's role was not replaced after his dismissal, although a service engineer was recruited in the Aberdeen area around May or June 2023 as a result of a significant contract which had been won. The other service engineers employed by the respondent were in their 40s.

44. Following the termination of his employment with R1 the claimant carried out work on a self-employed basis and subsequently obtained full time employment. He incurred £276.05 in financial losses.

Observations on the evidence

45. The Tribunal found the claimant to be a generally credible and reliable witness. The Tribunal preferred his evidence to that of the respondents' witnesses in relation to the timings of the meetings with him, who they were with and what was said at them. The Tribunal also formed the view that the claimant played down the impact of his dismissal upon him. The claimant appeared to be someone who simply accepted what he was told by his employer and 'got on with things'. The Tribunal was of the view that the claimant's evidence was more likely to be accurate in this regard as the events would have had a significant impact upon him, given his length of service and that he was given no notice of what was to be discussed at the meeting of 11 November.

46. The Tribunal noted in relation to Mr Carey, that he could not remember much of what was said during that period and gave the impression that dealing with the termination of the claimant's employment was not a matter of particular significance to him. The Tribunal came to this view on the basis that the meeting which preceded the meeting between him and the claimant on 11 November, appeared to have been very short; Mr Carey had no clear recollection of the meeting; he could not remember whether he was at part or all of the meeting, and had no clear idea of how long he took part in the meeting. The Tribunal formed the view that Mr Carey had a number of matters he was dealing with at that time in relation to R1 and other business interests and having decided that the claimant's employment should be terminated, took little further involvement in matters. The Tribunal could not accept the suggestion that Mr Carey, had he believed that a settlement agreement would be entered into by the company and the claimant, would not take any steps to ensure that this happened and had not asked for sight of the letter of dismissal of the claimant prior to the Tribunal proceedings. Mr Carey's evidence, which was accepted by the Tribunal, was that he had not seen the letter of dismissal (which had been signed by him with his electronic signature) until the Tribunal hearing itself.

47. Therefore, while the Tribunal could not determine exactly what was said at the meeting between the claimant and R2 on 11 November, the Tribunal was satisfied that Mr Carey made reference at that meeting to the claimant's age

and to his health not having been very good. The Tribunal accepted the claimant's evidence that Mr Carey asked the claimant whether he was thinking of retiring.

48. The Tribunal also preferred the claimant's evidence that it was Mr Carey and not RW he met with on 18 November. This seemed consistent with the claimant's recollection that Mr Carey was travelling abroad and therefore he was told 'not to keep him waiting' and RW's evidence that the sales team travelled to Spain around this time.

49. The Tribunal found Ms Dawson to be generally credible although it appeared to the Tribunal that both she and RW were expected by R2 to take responsibility for any mistakes which may have been made in dealing with the termination of the claimant's employment. The Tribunal could not however accept her evidence or that of HF that they were 'seriously concerned' regarding health and safety issues relating to the claimant. It was inconceivable to the Tribunal that if a Health and Safety Manager and a line manager had genuine concerns regarding risks posed to the claimant, the business and indeed others, they would not have taken steps to mitigate those risks, such as suspending the claimant until an occupational health assessment had been carried out, or at the very least raising those concerns with the claimant directly and asking for his comment. Instead, the claimant continued to work and indeed worked overtime hours until the termination of his employment.

50. Rather, the Tribunal concluded that both MD and HF came to the view (without medical evidence to support it) that the claimant's back condition was likely to deteriorate further and impact on his ability to perform his duties. The Tribunal found support from both MD's evidence that in her view the condition was 'only going to get worse', and the risk assessment documents where HF noted that in her view (again without medical evidence to support it), that the second injury to the claimant was possibly linked to the first injury, where it was noted (at page 175) that "On this occasion it appears that these measures were not followed which resulted in Tommy sustaining an injury/worsening his current injury." The Tribunal noted with surprise that the

'investigation' carried out by HF into the claimant's accidents were not shared with him, nor was he asked for input into them when they were being drafted.

51. The Tribunal did not accept the evidence of the respondents' witnesses that an offer of severance payment was made to the claimant because they were a 'good employer' and did not want to 'take the claimant down the capability route'. The Tribunal noted the evidence that having taken advice on the matter, the respondents understood that 'taking the claimant down a capability route' was likely to take around a year. There appeared to be no understanding from the respondent that this would not necessarily result in the dismissal of the claimant, given that they had no medical evidence which might indicate that the claimant was not capable of carrying out his role at all at the stage at which the issue of the claimant's dismissal.

52. Rather the Tribunal formed the view that the respondents made assumptions regarding the claimant's likely ability to return to his full duties, assumptions about the severity of his back condition, having failed entirely to discuss these matters with him at all prior to a decision that he should leave the business being reached. Moreover, all that was offered to the claimant was his statutory redundancy entitlement. As stated by RW the reference to redundancy was a sham. No enhancement was offered to him beyond his statutory entitlement, other than that he was not required to work his notice period. None of this suggested to the Tribunal that this was a situation where an employer was seeking to find a mutually agreeable termination of employment for a long serving employee who was likely to be dismissed otherwise. Rather it suggested an employer who wished to terminate the employment of an employee who they believed would become a liability and who had not been able to perform his full duties for a period because of an injury sustained while at work. The Tribunal was of the view that this approach appeared preferable to R1 than the possibility of continuing to have to employ him for a year to allow processes to be followed.

Relevant law

53. Section 95(1)(a) Employment Rights Act 1996 ('ERA') provides that an employee will be treated as dismissed if his or her contract of employment is terminated with or without notice.

54. In terms of the Equality Act 2010 ('EqA'), both age and disability are protected characteristics.

55. Section 13 EqA provides that a person discriminated against another if because of a protected characteristic, he treat that person less favourable that he treats or would treat others. That definition includes discrimination by perception.

56. Section 26 EqA sets out the circumstances in which a person will be harassed when they are subject to unwanted conduct related to a protected characteristic. Harassment may arise when the claimant does not possess the protected characteristic relied upon (see for instance **English v Thomas Sanderson Blinds Ltd 2009 ICR 543.**

57. The Tribunal will only have jurisdiction to determine any claim under the EqA in terms of sections 13 and 26 where it was brought within the statutory periods set out in section 123 of that Act.

58. In terms of the issue of disability discrimination by perception, the only appellate authority is that of **Chief Constable of Norfolk Constabulary v Coffey 2020 ICR 145**. In that case, the Court of Appeal recognised that in order to find that a person has been subjected to disability discrimination by perception, a Tribunal requires to be satisfied that the alleged discriminator must believe that all the elements of the statutory definition of disability are present. That judgment also noted the provisions of paragraph 8 of Schedule 1 to the EqA which makes special provision in respect of progressive conditions. Paragraph 8 provides that where a person has a progressive condition that results in an impairment having an effect on his or her ability to carry out day-to day activities, but the effect is not a substantial adverse one, it will still be treated as such if the condition will result in a substantial adverse effect in future.

59. ***Coffey*** concerned a police officer with a hearing impairment who sought a transfer. The Court of Appeal accepted that the Tribunal had made sufficient findings to conclude that while the employer in that case did not perceive the claimant to have a disability, it believed that the impairment may in the future render the claimant a disabled person.

Discussion and decision

Was the claimant dismissed?

60. In the first instance, the Tribunal considered whether the claimant had been dismissed by the respondent. The Tribunal concluded that the claimant had been dismissed. In particular, the Tribunal took into account that the claimant attended the meeting with R2 thinking he was going to meet HF and discuss his return to full duties. The Tribunal accepted that at that meeting R2 raised the possibility of the claimant being made redundant. R2 is the principal shareholder and Managing Director of R1. The Tribunal accepted that the claimant was shocked and taken aback. It was accepted that the claimant indicated he would need to speak to his wife. However, the Tribunal did not accept the respondents' suggestion that this meant that the claimant wanted to check whether he would accept an offer of termination of employment. In any event, there was no 'offer' made to the claimant other than that he was to be made redundant. No sums were discussed.

61. The Tribunal found the authorities referred to by the respondents' agent in this regard of limited assistance. The authorities related to general principles of contract. They did not take into account the peculiarities of a contract of employment. In particular, they did not take into account the provisions of section 203 of the Employment Rights Act 1996 ('ERA') which restricts the ability of parties to contract out of statutory rights which arise from a contract of employment. Insofar as any contract was created in relation to the termination of the claimant's employment which sought to restrict his ability to exercise his statutory rights, any relevant provisions would have been void by virtue of section 203.

62. It appeared to be the respondents' position that a contract was entered into between the claimant and R1 to terminate his contract at some point between 14-22 November, when figures were provided to the claimant. However, it was not suggested that the claimant was given an opportunity to discuss or negotiate these figures. Again, this was not indicative of discussions in the context of an agreement. The claimant was told he was to be dismissed and was told what he would receive.

63. The Tribunal rejected the respondents' submission that a contract had been entered into between the claimant and R1 on some unspecified date which was not committed to writing and would in any event have been void in so far as it had sought to exclude the claimant's statutory rights, as it did not comply with the requirements of section 203 ERA.

64. The Tribunal therefore concluded that the claimant was dismissed by R1 with effect from 30 December 2022.

Was the claimant dismissed for a potentially fair reason?

65. The Tribunal then went on to consider the reason for the claimant's dismissal.

66. The respondents' position was that the claimant was dismissed for some other substantial reason in that he had agreed to his departure on enhanced terms. While the Tribunal accepts that some other substantial reason need only be a reason which *could* justify dismissal and not which *did* justify dismissal, the cases of **Mercia Rubber Mouldings Ltd v Lingwood [1974] ICR 256** and **Willow Oak Developments Ltd v Silverwood [2006] IRLR 607** to which reference was made were of limited assistance in the particular facts of this case.

67. The Tribunal concluded that no agreement was reached with the claimant regarding the termination of his employment. He was told he was to be made redundant by R2 and he was given no other options. There was no discussion regarding what might happen if the claimant did not accept the redundancy position because there were no other options made available to the claimant. Therefore, in the absence of any agreement, there was no some other

substantial reason established by the respondents for the claimant's dismissal. Neither was any fair procedure followed in relation to the termination of the claimant's employment and therefore his dismissal was unfair.

5 Did either respondent perceive the claimant to be a disabled person at the material time?

68. As set out above, for the claimant to have been perceived as a disabled person, it was necessary for the respondent to have perceived that all aspects of the test set out in section 6 EqA were present in relation to the claimant.
10 That is, the alleged discriminator would have to be of the view that the claimant suffered from an impairment which would have a substantial and long-term impact on the claimant's ability to perform normal day to day activities. Regard should also be had to paragraph 8 of Schedule 1, whereby a person will be disabled if they have a progressive condition.

15 69. In this regard, the Tribunal was satisfied that the claimant had an impairment, which was his back condition. That condition arose following an incident on 5 February 2021. The claimant continued to take medication on and off and continued to have physiotherapy regularly for that condition.

70. Following the second accident at work, the claimant was off work with back
20 pain. The claimant was on restricted duties from March 2022 in that efforts were made to reduce his travel time to jobs and reduced his hours to 4 days a week from July 2022. He was also avoiding lifting anything heavy.

71. The claimant did not seek to argue that he was a disabled person. His position was that the respondents' perceived him to be so. The Tribunal concluded
25 that both MD and HF had come to the view by August 2022 that the claimant had a back condition, which was likely to deteriorate and limit his ability to perform his duties. They formed the view that this was an impairment, which was long term. At that time, they did not necessarily form the view that this had a substantial impact on his ability to perform normal day to day activities.
30 However, the Tribunal concluded that both MD and HF believed the condition

to be progressive. MD's evidence was that the condition 'would only get worse', HF's evidence was that the claimant 'underplayed' his condition.

72. The manner in which HF and MD carried out discussions regarding the claimant and their stated belief that he was likely to have been responsible for causing damage in yard and having driven erratically, none of which was put to him for his comment, led the Tribunal to conclude that they formed the view that the claimant was suffering from an impairment which was long term and was going to deteriorate over time. They perceived the claimant to have a progressive condition, which would further impact on his ability to drive and his mobility as time went on, all of which would limit his ability to carry out his job.

73. While the Tribunal acknowledges that the claimant's duties were not all normal day to day activities, it was of the view that driving is a normal day to day activity and the ability to walk short distances, move objects and more general tasks which require a level of mobility were all duties the claimant was required to carry out at work which amounted to normal day to day activities. Therefore, the Tribunal determined that HF and MD had concluded by 11 November that the claimant was likely to become a disabled person by reason of a progressive condition. They communicated this information, albeit not in express terms, to R2 either at or before the meeting of 11 November who accepted what they said and formed the view that the claimant was becoming a liability, who would not be able to continue to perform duties required of him. Therefore, the Tribunal was satisfied that both R1 and R2 perceived the claimant to be a disabled person by 11 November 2022.

Was the claimant discriminated against because of a perceived disability?

74. The Tribunal formed the view that the reason for the claimant's dismissal was that R1 perceived that the claimant would become a disabled person by reason of the progressive condition he suffered from. The respondents' agent sought to argue that this was a section 15 case 'dressed up as a s.13 case'. The Tribunal did not accept that submission. The Tribunal concluded that the

claimant was treated less favourably because the respondent perceived him to have a disability.

75. The Tribunal did not however accept that the sending of the letter of dismissal of itself was in any way related to the perception that he had a disability. The sending of the letter was simply part and parcel of the decision to dismiss the claimant.

Was the claimant discriminated against because of his age?

76. The Tribunal concluded that while the age of the claimant may have had an impact on the respondent's perception that the claimant was disabled, it was not of itself a reason for the treatment of him.

Was the claimant subjected to harassment either because of age or perceived disability?

77. The Tribunal accepted that R2 said words to the effect of 'I heard your health has not been the greatest'. However, it did not conclude that such a comment amounted to harassment. It was true that the claimant had experienced issues with his health and the Tribunal was not satisfied that in the particular circumstances of this case, the making of that comment either violated the claimant's dignity or created a intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

78. Further, while the Tribunal was satisfied that R2 made some reference to the claimant's age and whether he was thinking of retiring on 11 November nothing which was said to the claimant at that meeting amounted to harassment. Neither did HF deliberately mislead the claimant regarding the purpose of that meeting. The Tribunal accepted that HF probably intended to meet with the claimant, but that the outcome of the meeting between her, MD and R2 was such that R2 indicated he would speak to the claimant instead.

79. The Tribunal therefore concluded that the claimant was not subjected to harassment either related to age or disability.

What compensation should be awarded to the claimant?

80. The claimant's financial losses were agreed between the parties as amounting to £276.05. It would also be appropriate to make an award in respect of loss of statutory rights in the sum of £500.

81. Finally the Tribunal considered what award should be made in respect of injury to feelings on the basis that it concluded that the claimant had been dismissed because he was perceived to have a disability. The Tribunal took into account that the claimant gave little evidence on how his treatment had affected him. However, it was also mindful of the respondents' witnesses description of him, which it accepted, that the claimant played down difficulties and just got on with things. The claimant had been a long serving employee of the respondent and was 63 when he was dismissed. While he said he was shocked and upset the Tribunal took into account that he was likely to minimise the impact on him. In those circumstances, the Tribunal concluded that an award at higher end of the lower band of Vento would be appropriate and awards £9500.

82. As no procedure was followed in relation to the claimant's dismissal, the Tribunal determined that an uplift of 20% should be applied to the compensation awarded. While R1 is not a large business, the Tribunal heard that it had the benefit of employment support and advice, which it had taken in relation to a possible capability procedure.

83. The Tribunal noted that the claimant did not appeal against his dismissal or raise a grievance. However, the Tribunal was also mindful that it was R2 who had made the decision to dismiss the claimant. He was the principal shareholder and Managing Director of R1. In addition, while the letter dismissing the claimant did give him a right of appeal, it simply said that the appeal would be sent to a manager to deal with. R2 had not seen the letter before it was sent to the claimant and therefore while the letter on the face of it offered a right of appeal, the reality was that no right of appeal was in fact being offered.

84. Therefore, the total compensation payable to the claimant is (£276.05 + £500 + £9500) * 20% = £12,331.26.

A Jones

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Employment Judge
15 January 2024

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Date sent to parties **<u>15 January 2024</u>**