Case Number: 1600387/2016

EMPLOYMENT TRIBUNALS

Claimant: **Mr Paul Watkins**

Respondents **Condor Marine Crewing Services Limited**

Heard at: **Cardiff** **On: 18 - 20 January 2017**

Before: **Employment Judge P Cadney**
Members:
Representation:
Claimant: Mr D Curwen
Respondent: Mr R Jones

JUDGMENT

The claimant's claims of:-

i) Unfair dismissal;
ii) Unlawful deduction from wages

are dismissed.

REASONS

1. By this claim the Claimant brings claims of unfair dismissal and unlawful deduction from wages. The Respondent dismissed the Claimant for misconduct on 18 December 2015 in relation to two matters. The first was the failure to shut down an engine and/or contact the duty ship manager following an incident on 20 and 21 August 2015 on a vessel the Condor Rapide. The second was the failure to maintain a valid medical certificate confirming his fitness to work at sea.

2. The essence of the Claimant's claim (subject to a more detailed analysis of his submissions later in this decision) is that in respect of neither could he reasonably have been considered to have been guilty of misconduct, and/or that even if he could reasonably have been considered guilty of misconduct that it was insufficiently serious to justify dismissal; and that for either or both reasons the decision to dismiss fell outside the range of reasonable responses. The respondent contends that in both cases they reasonably concluded that he was guilty of gross misconduct and that dismissal fell well within the range of sanctions reasonably open to them. There is relatively little dispute of fact between the parties.

3. The Claimant is an extremely experienced marine engineer and was employed by the Respondent from the 31 March 2011 as a Chief Engineer. The Tribunal has seen and read a number of highly technical documents relating to the Shipboard Management System which was developed in accordance with the International Safety Management Code (ISM) a physical copy of which is kept in each vessel. However, in relation to the dispute as to the failure to shut down an engine the essence of the dispute between the parties is relatively straightforward. There is a risk of explosion in enclosed crank cases, and the mechanism by which these explosions can occur is not contentious. The bearings inside the crank cases are fed with a liquid lubricant. If a part of the surface becomes hot enough for whatever reason to vaporize the liquid oil an oil mist can accumulate which, if it itself comes into contact with the heated surface, may cause an explosion potentially creating further oil mist. This then creates the risk of a secondary explosion. If the first explosion has been sufficiently powerful to damage the crank case allowing for ingress of air a secondary and much more powerful explosion can occur. It is not in dispute that in the worst case such an explosion could cause very significant damage to the engine itself and injury or loss of life to crew or passengers (For the avoidance of doubt, as will be set out later, it is the Claimant's case that in reality no such serious risk was in fact present in the case of the Condor Rapide vessel).

4. To meet this risk it became mandatory to fit both explosion doors, which are designed to contain the initial explosion and prevent the more dangerous secondary explosion, and oil mist detectors (OMDs). It is not in dispute that it was mandatory to fit oil mist detectors on the engines

being used in the Condor Rapide. The essence of an oil mist detector is that it contains a light source and detector. If the light source is obscured from the detector, for example, by a build up of oil mist, the detector will trigger either a warning or shut down the engine. At the heart of the Respondents case is the proposition that if the oil mist detector is not working it follows inevitably that there is no means of accurately detecting whether there is a build up of oil mist within the crank case and therefore no means of detecting whether there is a risk of explosion. It follows automatically says the Respondent that to continue to run an engine with a non-functioning oil mist detector is inherently dangerous and the danger should be apparent to any qualified marine engineer let alone anyone as experienced and qualified as the Claimant. Again as will be set out in greater detail later the Claimant does not accept this asserting that there are a number of ways in which the likelihood of an explosion can be monitored and that there is nothing inherently unsafe in continuing to run an engine with no functioning oil mist detector, and that to do so fell well within his discretion as a chief engineer.

5. The respondent's fleet uses two different types of oil mist detector. The oil mist detectors fitted to two of the Respondents vessels, the Express and the Vittesse were Schaller OMDs and that fitted to the Rapide was a QMI OMD. The claimant, in particular, has given relatively detailed evidence as to the differences between them. However in my judgment nothing turns on the differences in their construction or operation.

6. The incidents which led to the disciplinary proceedings against the Claimant began on 5 July 2015. On Sunday 5 July 2015 the Claimant was working a day shift on the Rapide on a return trip from Guernsey. In doing so he carried out standard checks on the various engine rooms. He firstly checked the starboard engine room and then the port engine room. The last engine he checked was the port outer forward or main engine (POME as it has been referred to at some points). In order to check the operation of the QMI OMD unit he used a magnetic wand. If the OMD is working correctly once the magnetic wand touches cell 1 the unit should drop into cell test mode and then automatically cycle through all ten separate cells within the OMD, at the end of which if the cells are performing correctly it should return to normal use. However on this occasion it did not do so and immediately began the test cycle again. Put simply the OMD entered a recurring cycle during which at the end of each test it would start a re-test. This was a fault which had never occurred before.

7. The Claimant was obliged to return to the bridge, as on approach to what is known as the Red Zone a bridge team of the Master, the Mate and Chief Engineer must be in place. Until he was called to go to the bridge for entry into the red zone he attempted to get the OMD to return to normal. On returning to the bridge he sent the Assistant Engineer down to man the port engine room. Shortly after passing the Grand Jardin light the engines were slowed to idle and the vessel berthed. The Claimant kept the POME running and asked the assistant engineer to try and see if it would be shut down by the OMD by "smoking" (i.e. testing) the OMD. However the engine did not shut down, demonstrating beyond doubt that

whilst this fault was present the OMD was not functioning correctly. The Claimant informed Arnaud Maurice the incoming chief engineer and Chris Eggleton, the Rapide ship manager. The vessel ran on three engines on the evening run to Jersey after which an attempt was made to repair the OMD which was unsuccessful and accordingly they left it with the supply fuse out.

8. On Monday 6 July the Claimant joined the ship at 5.00am, he put the fuse back into the unit and it apparently worked perfectly and shut down the engine when it was smoke tested. Accordingly the Claimant was happy to sail on all four engines and on 9 July sent a report to Condor.

9. The second incident occurred on 20 August 2015. Between 18 and 24 August the Claimant was working nights on the Rapide and on the approach to St Malo from Jersey the same fault occurred as had happened on 5 July. The Claimant's response was to ask the assistant engineers Peter Woods and Dean Newman to keep the port engine room manned. He slowed the POME to 900rpm, he set the right hand ISIS screen to show the POME graphic and the left hand ISIS screen to show the run up page of lubrication oil and cooler temperatures and pressures, which he describes himself as "monitoring like a hawk" for the remainder of the journey. Accordingly the Claimant took the decision to keep all four engines running until they berthed.

10. At 3.38am on 21 August he reported the incident to Chris Phillips and copied it to Chris Eggleton and Sean Collins, Fleet Asset Manager. Mr Collins replied saying:

    "*Thank you for the email informing that there was a recurring fault on a QMI unit and that you were able to rectify the defect overnight. I note from the email below that the failure occurred on the return leg from Jersey. Can you confirm that the Duty Ship Manager was informed of this incident, that the engine was shut down and that an incident report will be issued when time allows?*"

    An email to similar effect was also sent on 21 August from Chris Phillips the Ship Manager stating

    "*Hi Paul.*

    Issue: Failed QMI unit on POME after 19 hours running time. Action: Can you please confirm that the engine was shut down and did not run while the OMD unit was at fault? This is company policy and requires confirmation to the Duty Ship Manager at the time of the incident.

    Timing: The required shut down is mandatory for all QMI owned defaults. The engine should not be re-started until the fault has been rectified.

    Background: The running of an engine with a QMI OMD fault can lead to a catastrophic failure if a future oil mist were to develop and cause a crank case explosion due to failed bearing or components.

11. Mr Phillips conducted an investigation into this and the report from the following day 22 August reads in part as follows:

    " The original repaired.. board had been fitted but had then failed on the return sailing on 20 August..
    .. PW decided that due to the recent failure it was beyond a shadow of a doubt that it was a card failure and no oil mist was present within the engine in PW's consideration.
    PW confirmed the engine was running for approximately a further 10 minutes at full speed before slow down to enter Saint Malo waters after the engineers had attempted various checks.
    PW stated that due to lack of phone reception the Duty Ship Manager was not called. He decided to get the Burgess Engineer to repair the unit and send an email after the repair which was done.
    The ER was manned at all times while the OMD was in fault condition. Assistant Engineer was Peter Wood covering for Dean Newman ERA was Alan Ashmore.
    The OMD went into alarm at approximately 20.30 on 20 August 15. FWE alongside Saint Malo was 21.46 on 20.08.15.
    CJP asked PW if he was aware of the procedure set out in the ISM Operating Manual 86m Engineers Handbook Volume 2 Main Engine 2.8.4 Main Engine Mist Detector Alarms. PW said that he knew that he should have contacted the Duty Ship Manager but due to lack of phone reception this was done by email at a later time.
    In PW's consideration the fault was purely an electronic board fault and not an engine fault therefore the engine was not shut down. If the fault had occurred before proceeding to sea he would not have run the engine in that condition.

12. Following receipt of this report Mr Collins took the view that the Claimant's actions were inadequate and required further investigation and accordingly on 10 September invited the Claimant to a further investigatory meeting which took place on 9 October. In the course of this meeting Mr Collins set out his position which essentially remains that of the Respondents since that date that the Claimant had caused a significant risk to the business. If the engine had failed and exploded it could have cost £1,000,000 and put the Claimant and his colleagues at risk from a health and safety perspective; and that the Claimant should have shut the engine down. As this was the second time that it had happened and as the Claimant had from the first incident known that whilst the fault was present the OMD was not working, Mr Collins expressed a view that Mr Watkins knew the engine wasn't protected and there could have been an explosion with someone standing next to it and that the risk was not the Claimant's to take when the engine wasn't protected.

13. In essence the Claimant maintained the position set out above that he had taken a decision which he thought both at the time and subsequently was the correct one for the reasons given before. Mr Collins did not accept this. He summarises it in paragraph 27 of his witness statement,

"*in my view the Claimant was well aware or at least should have been of the potential consequences of his actions. Not only did he put lives at risk, there could have been substantial damage to the engine, not to mention reputational damage to the Respondents business*.

14. As a result the Claimant was invited to a disciplinary hearing by a letter dated 21 October for two matters one of which that he had failed to follow the proper procedure and act appropriately when there was a QMI failure on the Condor Rapide.

15. The second matter which had led to his disciplinary hearing was his failure to maintain his EMG1 Certificate. This is a seafarers medical certification to confirm that they are fit to work at sea. The Claimant's EMG1 expired on 9 September 2015 and it did so without the Claimant having renewed it. The Respondent's position is that the failure to renew an EMG1 is an extremely serious matter as without it an employee cannot work at sea. In the Claimant's case he was employed to work at sea and therefore the absence of an EMG1 would have prevented him from working. In addition it is a contractual requirement that the employee holds the required certificate. In addition the Respondents position is that the absence of a valid EMG1 prevented the Claimant from attending a revalidation course at Warsash Maritime Academy in Southampton between 5 and 8 October 2015. The reason for that is the Respondent says that the type of training is extremely physical and requires employees to carry out the sort of physical activities that would be necessary on board ship such as fire fighting training, jumping into swimming pools to carry out simulated rescues and therefore the employee needs to be as physically fit to attend the training as he or she does to work. In the absence of an EMG1 the Respondent could not send the Claimant on the course, it asserts, because it could not be sure he was fit enough to do so.

16. The Claimant's case is that his EMG1 expired when he was on leave and he was not in fact rostered to work again,other than to attend the revalidation course, until 20 October. He had in January 2015 begun to have a problem with his knee and he took a decision that he was going to have it investigated privately before renewing his EMG1. He had intended to do this during his leave. He anticipated receiving his EMG1 in plenty of time for his next rostered week of work beginning on 20 October. The Claimant in fact met his own doctor Dr Tuan on Wednesday 14 October and he issued him with an EMG3 which stated he was temporarily unfit to work at sea. The Claimant asserts that he had seen the company doctor, Dr Newman during the week beginning 19 October who said that he could not do anything about the EMG3 but that he would not have given an EMG3 and reported the matter to Condor. Dr Newman also suggested that given that his BMI that the Claimant be given a target weight to achieve. The Claimant contacted Dr Tuan and was given a target weight. On 28 October he attended Dr Tuan and was given a one year EMG1. In total therefore the Claimant had not been in possession of a valid EMG1 from 9 September to 28 October.

17. The disciplinary hearing was conducted by Oliver Futter and eventually took place on 23 December 2015. The Claimant gave a similar if more detailed explanation to that given in the earlier two investigatory meetings and again reiterated although he accepted that it was not ideal to run the engine, that taking everything into consideration he felt it was perfectly safe to run the engine for 20 minutes or so at the full rate and then slow down to 900rpm. He did accept that if you asked an engineer would they run an engine without an OMD working then the straightforward answer would be "no", but stated effectively that it was a discretionary decision and that he knew there was nothing wrong with the engine and that he had taken all appropriate precautions. In respect of his failure to phone the Duty Superintendent the Claimant replied that he did not need any information or help, he was happy to make the decision himself and then notify of the decision when he returned.

18. Mr Futter concluded that he was not satisfied by the Claimant's explanation. In brief he did not accept that the Claimant had the appropriate authority to assume the risk of the decision he had taken and it was his duty to speak to the Duty Superintendent. Also he took the view that it was fundamentally unsafe to allow an engine to be running without a working OMD and that whilst the Claimant had taken the view that this was just an electronic fault and that his monitoring of the units telemetry, allowed him to conclude that the engine was reasonably safe, that this was not something the Claimant could possibly have known. Mr Futter sets out at paragraph 28 of his witness statement:

    "He therefore took the risk of a potentially catastrophic consequence including that there could have been a crank case explosion with up to 800 passengers on board. Such an explosion clearly presented a health and safety risk as well as risking an explosion which could have caused around £1,000,000 of damage and a replacement engine and a vessel being in repair for weeks not to mention reputational damage to the Respondent. I felt that as the Claimant did not accept that he had done anything wrong he might do the same again. In addition, he was concerned about the Claimant's disregard for procedures and the failure to notify the Duty Superintendent and he compared the Claimant's actions in July when he had taken the decision to shut the engine down with that in August where with an identical fault he had taken the decision to continue the engine running and that in July the Claimant himself had described the OMD as a critical piece of safety equipment."

19. In respect of the EMG1 the Claimant set out the reasons why it had not been renewed by 9 September and reiterated the question about the problem with his knee and his weight and that he had taken the decision that he could use his rest days, annual leave and training course which would ensure that he would not be working during the period between 9 September and 20 October and that would have been sufficient to obtain a valid EMG1. The Claimant accepted that he could theoretically be called into work on a rest days and that therefore he knew it was a technical breach of his contract of employment.

20. He took the view that both the allegations were substantiated and that each warranted dismissal for gross misconduct in its own right and accordingly he set out the reasons for dismissal in a letter dated 23 December 2015. The specific reasons for dismissal set out in the letter are, in respect of the POME QMI failure : *"In line with company policy and the directive as discussed that procedure was not followed because you did not shut the engine down and you also did not contact the Duty Ship Manager as the directive requires. These actions create a significant health and safety risk. Time should not have been a factor in this case or in any similar event because safety should come first and the required call to the Duty Ship Manager would have initiated the necessary communication if the ship was to be delayed as a result.*" In respect of the EMG1 it stated, "*In regards to the EMG1 it is felt that you had planned the reinstatement of your EMG1 in enough time following the notifications you were sent and bearing in mind that you knew of the medical issues and that they may cause a delay, you could have been able to obtain your EMG1 in a timely manner. You were unavailable for work for a period of 4 to 5 weeks aside from your period of annual leave which is not satisfactory and not in line with the terms and conditions of your contract or company policy*."

Unlawful Deduction from Wages

21. The Claimant in addition has a claim for unlawful deduction of wages which relates to 29 days. 20 of those days relate to rest days applied between 20 November and 14 December and 9 sick days which should have been firstly paid in full and/or not treated as sick days at all.

22. The Respondents explanation is (as is set out in a letter of 20 October) that as he did not have a valid EMG1, he would be on unpaid leave from 8 October, that was calculated by adding rest days and annual leave meaning that he was paid from 9 September to 8 October, when he otherwise would not have been. The Claimant then submitted a retrospective Fit Note dated 26 October for the period from 30 September to 4 November. The Claimant contacted the Admin Payroll Manager Mike Bisson on 21 October stating that he was trying to avoid being signed off sick but Mr Bisson explained that he could not be placed on rest days when he didn't have a valid EMG1 as he couldn't work. It was therefore unpaid leave. The Claimant obtained a further Fit Note signing him off from 11 November for one month. As a consequence the Respondent took the view that the Claimant had by 24 November taken all of the 56 days paid leave to which he was entitled under the Contract of Employment and that his sick pay would expire on 24 November but that his 8 rest days accrued would be applied from 24 November.

23. Following a further email exchange between 10 and 16 December it was agreed by the Respondents that the Claimant was owed 7 rest days plus a further 5 rest days a total of 20 including the 8 already identified. Accordingly when his company sick pay expired on 24 November the 20

rest days were applied from the period of the 25 November until 14 December which meant that given that he had exceeded his right to sick pay that from 15 December until his employment was terminated on 23 December he was on unpaid sick leave.

24. In essence the dispute turns upon the interpretation of paragraph 8.2 of the Contract of Employment and whether the Claimant was entitled to 112 days sick pay or 56. Paragraph 8.2 provides that:

    Seafarers' who are taken ill may be entitled to sick pay limited under the provisions of the MLC applicable to Bahamian vessels and subject to the exemptions therein to a maximum 112 days (16 weeks) on pay commencing with the first day of sickness … Where sickness injury occurs while the seafarer is not working on a vessel or is the result of a pre-existing condition sustained prior to when employment commenced the provision is as follows: After six months permanent full employment the entitlement for sick pay for permanent employees is 56 days on full pay in any period of 365 days commencing with the first day of sickness. Any further sick pay is granted solely at the company's discretion.

25. The Claimant contends that that means he is entitled to 112 days and therefore there was no authority to reduce sick pay for the period set out above. The respondent submits that the claimant misunderstands the provision. As the claimant was off sick for a condition which certainly did not occur while he was working on a vessel, and may have been a pre-existing condition he falls squarely within the provisions of the second part of the clause not the first, and he is therefore limited to 56 days paid sickness absence. It follows, submits the respondent that if they have correctly calculated the sick pay entitlement it follows automatically that there is no unlawful deduction from wages, indeed quite the opposite, as they paid the claimant for unused rest days for the period during which he would otherwise have received no pay.

26. I should make it clear that here is no material before me relating to "the MLC applicable to Bahamian vessels and subject to the exemptions therein" and therefore I have to assume that that part of the clause would be applicable to the claimant. However even making that favourable assumption in my judgment the respondent is correct to say that in this case the entitlement to sick pay is governed by the second part of the clause. I equally accept the respondents second submission that if they are correct in the calculation of sick pay that there has been no unlawful deduction as the claimant's unused rest days have been used to cover the period in which he would otherwise not have been paid.

Unfair Dismissal

27. That leaves the claim for unfair dismissal. As this is a conduct dismissal there are four questions I have to answer. The first is whether the respondent has satisfied the burden of proof on it that it dismissed for a potentially fair reason. It has not been suggested at any stage that the

claimant was dismissed for any other reason than a genuine belief in the misconduct so this test is clearly satisfied.

28. The next three questions are whether the respondent conducted a reasonable investigation, drew reasonable conclusions as to the misconduct, and whether dismissal was a reasonable sanction. The range of reasonable responses test applies to each of these questions.

29. As set out above in respect of both the allegations of misconduct the basic facts of what occurred are not essentially in dispute. It follows that all that is required of a reasonable investigation is to allow the claimant to explain why he acted as he did. As the sequence of events set out above confirms, he was in my judgment given every opportunity to do so at each stage and so the investigation was clearly reasonable.

30. Dealing with the final issue of sanction, in my judgment had the claimant only been dismissed for the failure to renew his EMG1 certificate on time the question of whether dismissal fell within the range reasonably open to the respondent would have been a finely balanced one. However I have no doubt that if the respondent was entitled to conclude that the claimant knowingly took the risk of continuing to run an engine when he knew or should have known that it posed a serious risk of damage or injury, dismissal would squarely fall within the range reasonably open to them. It follows that in my judgment the central question in this case is the second one. Was that a conclusion it was reasonably open to the respondent to draw?

31. In broad terms the Claimant in respect of the failure to shut down the engine issue makes a number of points. Firstly he denies that the specific procedures set out in the directives referred to by the respondent were in fact applicable to the situation which occurred and secondly and more fundamentally, he submits that the respondent has taken a far too apocalyptic view of the likely consequence of an explosion in the engine.

32. In respect of the first matter, it has been accepted in evidence that the specific policies relied on were not expressly applicable to the QMI OMD system. However, the Respondents evidence, in particular that of Mr Collins, is that this is utterly and absolutely fundamental to an engineers training and that there simply should, because of the risk of explosion, be no occasion on which an engine is allowed to run with an OMD which is known not to be functioning. Put simply the Respondents case is that the Claimant was far too cavalier about the risk of an explosion which, had it eventuated, could have caused enormous damage to the engine at the very least and could, given that the Claimant had specifically instructed his more junior engineers to be present in the engine room to monitor the telemetry, have resulted in the very least in injury or possibly death. It is simply not open to the Claimant to minimise that risk. I have no doubt that the claimant is convinced in his own mind that what he did was safe. However the question for me is whether it was reasonably open to the respondent to have concluded that it was not.

33. It is striking that as set out above the immediate reaction of those who were informed as to ask for confirmation that the engine had been shut down, and that that was Mr Collins immediate and continued view. The claimant finds himself in a minority of one on this issue and in my judgment on the basis of the information before him it was clearly open to Mr Futter to conclude that that claimant's actions posed a serious health and safety risk. In my judgment that was a conclusion that it was open to the Respondent to draw on the evidence before it, and self evidently reasonable to regard that as gross misconduct and therefore apt for dismissal subject to the caveat set out below.

34. The Claimant's third fundamental point is that it was not open to the Respondent, or at least was fundamentally inconsistent for the Respondent to regard the incident in August as gross misconduct when it had done nothing to reprimand or suggest to the Claimant the way he had approached the matter in July was wrong. The Claimant's case is that essentially his conduct in August was not any different to that in July, and that to receive no disciplinary sanction for the first whilst being dismissed for the second is inconsistent and inherently unfair.

35. The Respondent submits that the two are not in fact comparable. The incident in July was the first time that the fault had occurred and therefore until the Claimant had carried out the smoke test, which he did after the vessel had docked, that it could not be known for certain that with the OMD in test mode that it was not actually functioning correctly. Effectively they gave him the benefit of doubt in July. However the difference, the Respondent contends, is that once he had discovered that with the fault present the OMD was not functioning and would not shut down the engine in the event of the increase in oil vapour, that he was bound to act on that knowledge when the fault recurred. On 20 August the Claimant knew for certain, as it was the same fault, that the OMD was not working. In those circumstances this was not a case of judgment and not a case of balancing risks but taking the absolute and certain risk that the OMD was not working. That was not a risk for the reasons set out above, that it was open for the Claimant to take. In my judgment that was a conclusion that the respondent was entitled to reach and a distinction it was entitled to draw.

36. It follows I my view that the decision to dismiss the claimant in respect of the engine incident was reasonably open to it on the information before it. As the decision was that each incident in and of itself amounted to gross misconduct that conclusion is sufficient to resolve the claim in the respondent's favour.

37. For completeness sake, however, effectively the Respondent contends that the Claimant took a similarly blasé attitude towards the requirement to possess an EMG1. He had actively anticipated allowing it to lapse and not obtaining a replacement until the period of what he considered to be his leave and rest days. He was therefore effectively deliberately allowing it to lapse when he is contractually required to have one at all times and could be required to work during that period. He had therefore for a period

of 4 to 5 weeks put it outside his control as to whether he had an EMG1. As set out above in my judgment the respondent was self evidently entitled to view this as misconduct as it was a deliberate breach of an express term of the claimant's contract of employment. Its consequences are however clearly less significant than the other matter. Given that I have concluded that in and of itself the respondent was entitled to dismiss for that matter alone it is not necessary to come to any concluded view as the more difficult question in respect of the failure to renew the certificate.

38. Accordingly the Claimant's claim for unfair dismissal must also be dismissed.

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Employment Judge P Cadney
Dated: 24 March 2017

JUDGMENT SENT TO THE PARTIES ON

31 March 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

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NOTE:
This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.