Case No: 2200616/2017

EMPLOYMENT TRIBUNALS

Claimant: **Miss E. Bouzouma**

Respondent: **Carillion Services Limited**

Heard at: **London Central** **On:** **3 August 2017**

Before: **Employment Judge Goodman**

Representation
Claimant: Mr K. Perera, Fadiga and Co, solicitors

Respondent: Mr G. Baker, counsel

RESERVED JUDGMENT

1 The unfair dismissal claim succeeds.

2 The respondent is ordered to pay the claimant a basic award of £1,020.

3 The claimant contributed to the dismissal and the compensatory award is thereby reduced by 60%.

4 The amount of the compensatory award will be decided at a remedy hearing (3 hours) on **18 December 2017**.

REASONS

1. The claimant was dismissed on 15 November 2016 because the respondent employer was not confident that she had the right to work in this country. In fact, she did. She presented a claim of unfair dismissal to the employment tribunal.

2. The respondent argues that their inability to establish her immigration status, such that they might contravene a statutory enactment by continuing to employ her, was a substantial reason for dismissal, and that the process adopted was fair.

Evidence

3. The tribunal heard from following witnesses:

Georgina Kenny Williams HR advisor
Jason Jones, facilities coordinator at Bury's house where the claimant worked, and her point of contact with the respondents business
Kay Reeves, supervisor of cleaners
Susan Baker HR Assistant
Edoukou Bouzouma, the claimant

4. There was a bundle of document containing extracts from immigration legislation, Home Office guidance to employers, and letters and emails. The tribunal read those documents to which it was directed.

Findings of Fact

The Claimant's immigration status

5. The claimant, now aged 45, is a Ghanaian citizen. In 2005 she entered the UK on a visit Visa, and overstayed when it expired. On 16 October 2007 she married a French citizen, who as an EEA national could exercise a treaty right to work in this country. She obtained an EEA family member residence card which states that employment is allowed. In March 2014 the claimant petitioned for divorce, and the decree absolute was granted 8 October 2014.

6. The card expired on 17 September 2015. Before expiry, she applied for further residence card. The Home Office sent her a certificate of application on 9 October 2015. The certificate of application states that a decision will be made as soon as possible and in any event within the next 6 months. It goes on to say: "you are permitted to accept offers of employment in the United Kingdom, to continue in employment in the United Kingdom, whilst the application is under consideration and until either you are issued with residence documentation or, if your application is refused, until your appeal rights are exhausted".

7. A section of the letter is headed "note for employers", and states: "this document may form part of the statutory defence against liability to pay a civil penalty under section 15 of the Immigration and Asylum and nationality act 2006 for employing an illegal migrant worker. However, it should only be accepted for this purpose is presented within 6 months of the date of issue and providing you can demonstrate that the document has been verified by the Home Office employer checking service". Employers are told that after 6 months from the date of application the employee should be asked to present his or her residence card as evidence of continuing eligibility to take continuing employment in the United Kingdom.

8. On 4 February 2016 the Home Office wrote to the claimant's solicitors saying that her application had been refused. The reason was that there was insufficient evidence that at the time of the divorce the claimant's EEA husband was exercising his Treaty rights, that is, working, self-employed, self-sufficient, or student. The claimant's solicitors lodged an appeal, enclosing some of his payslips from 2010, on 16 February 2016.

9. On 7 December a notice of the hearing of the appeal on 18th of May 2017 was sent by the First-tier Tribunal. On the day, the hearing was postponed at the request of the Home Office in order to verify the former husband's employment record, and the hearing is now listed for November 2017.

10. If the Home Office letter of 9 October 2015 is accepted as correct, the claimant still has the right to work because her appeal rights are not yet exhausted.

Employer responsibilities for checking employees have the right to work

11. The Immigration, Asylum and Nationality Act 2006 made changes that have the effect of outsourcing immigration control from the state to employers. Section 15 provides that employing an adult subject to immigration control if (among other things) is leave to remain has ceased to have effect, renders the employer liable to pay a civil penalty. 15 (3) provides "an employer is excused from paying a penalty if he shows that he has complied with any prescribed requirements in relation employment." The statutory excuses are listed in the immigration (restrictions on employment) order 2007. The employee must produce documents set out in list A and list B. If the employer can show that he has seen them, is excused from penalty if it turns out that the employee did not have the right to remain work. The only documents the claimant could have produced after 2015 were item 4 in list B, that is a certificate of application for a family member of an EEA national stating that the holder is permitted to take employment which is less than 6 months old when produced in combination with evidence of verification either border and immigration agency employer checking service, or, possibly, a letter from the Home Office confirming her right to work, in combination with a national insurance card.

12. The Home Office issued a statutory Code of Practice for employers about immigration checks in 2014. This is not in the bundle, and the Tribunal was not taken to it, but it can be found in Butterworths. The last provision says that if the employee is unable to present document because they have an outstanding appeal, the employer must contact the employer checking service and get a positive verification notice, which will give them a statutory excuse for 6 months.

13. The Home Office has produced guidance for employers. "Frequently asked questions about the legal work and civil penalty scheme" was published in the 25th. The employer relies on Q56 stating that a certificate of application for a family member residence card is valid, but only if it is less than 6 months old. Q57 tells employers that if the certificate is more than 6 months old employees "can apply to the Home Office for a replacement certificate of application which will again be valid for 6 months". Q69 answers what to do if an employee has appealed Home Office decision. Employees are told in that case to get to verification notice from the employer checking service.

14. Finally, Q74 tells employers that they risk civil penalty if an employee, produce documents and "employees suspended from work or sent on "gardening leave" generally continue to be employees of the employer, and, if so, continue to put the employer at risk of a civil penalty if they are not permitted to work". The Tribunal observes that this is probably the reason why

employers usually suspend without pay, which is otherwise a breach of the contract of employment.

15. Just before the events leading to this claim, the Home Office issued a further document, dated 12 July 2016, "An Employer's Guide to Right to Work Checks". The significance of the date is that it is the commencement of additional provisions in the Immigration Act 2016, which had the effect of altering the burden of proof in connection with the criminal offence of employing an illegal worker. This document states that in certain circumstances employer has to contact the Home Office to verify that someone has to write to work in the UK. This includes "you are satisfied that you have not been provided with any acceptable documents because the person has an outstanding application with the Home Office which was made before their previous permission expired has an appeal or administrative review pending against a Home Office decision and therefore cannot provide evidence of their right to work". In that case the only stack to excuse aloud is that the employer must obtain verification notice. To make a verification request, the employer has to obtain confirmation from the employee when the appeal was made and say so in the request form.

The claimant's employment

16. The claimant started work as a cleaner at the Verizon building in St Pancras Way on 18 September 2009. From then until dismissal she worked daily from 5 to 8 p.m.

17. Her employment was subject to a TUPE transfer to the respondent in 2013. In October 2013 the respondent checked the immigration status of all staff. A note was made that the claimant had a family residence card which will expire in September 2015.

18. The respondent did not know that the claimant had divorced in 2014, or that she had applied for a card shortly before expiry in 2015, or that he is application had been refused in February 2016, or that she had appealed.

19. On 17 August 2016 the respondent carried out further document checks on the immigration status of its staff, including the Verizon building. Jason Jones saw the claimant at start of a shift and asked her to produce and documents about immigration status. According to the records her card had expired, so Jason Jones told her not to come in the next day (Friday) and they would sort it out on Monday.

20. Next day the claimant sent a text to Jason Jones with the direct number for Home Office, and a reference number, which, unfortunately, is not the Home Office reference number, but her solicitor's own reference. Then on Monday, the claimant saw Jason Jones at start of the shift and showed him the letter from the Home Office of 9 October 2015, and the application itself, with the certificate of posting, and notice about attending for biometric records. She told him that she had divorced and this was causing delays with paperwork. Jason Jones noted that this letter was more than 6 months old, and told the claimant she would need to ask the Home Office for a fresh letter. This is of course what employers are told to do in Q57 of the 2014 guidance. With the claimant by his side Mr Jones telephoned Home Office helpline. He gave her an email address to send her request for a new certificate which had

been sent in by Louise Baker in HR. Unfortunately it appears the email address is incorrectly spelled (reqeusts, not requests).

21. The claimant got someone to write a letter for her to the Home Office asking for a new certificate. The letter does not give the Home Office reference, only her solicitor's reference. She got someone with a Hotmail address to email for her to the address provided by the respondent, attaching her handwritten letter, and the Home Office letters, including 9 October. Had this reached the Home Office, they would have been able to identify her file from their own letters, but it probably did not reach them because the address is misspelled. What is certain is that she did not get any reply.

22. The respondent says that on towards the end of August a letter was sent to the claimant saying that she was suspended for up to 3 months, so she could produce documents showing she had the right to work, and if by that time she could not, her employment would be terminated. Neither party has produced this letter, nor is it mentioned in any witness statement. It is surprising that a large firm relying on template letters (as this was) should not be able to retrieve from its computer systems any evidence of what the letter said, or that it was sent. This raises a suspicion that sending a suspension letter was overlooked in the claimant's case.

23. Mr Jones said he thought claimant knew she was suspended for up to 3 months until she could produce the documents. Contemporary emails show him asking his colleagues in Wolverhampton whether she should be suspended (17 August), and that if documents had not been provided by 20 August "we will need to look at suspending her". On 23 August emails state that the claimant was taking pre-booked holiday for the week, Susan Baker on 23 August said "the best action is to ensure she after she is paid on 25th she is placed on payroll suspend to ensure we are compliant with Home Office guidelines". Susan Baker also emailed Jason Jones a copy of the suspension letter on 23 August. This suggests a suspension letter *had* been prepared, but it is not known whether it was sent to her, and suggest also that the claimant had not had it when she saw Mr Jones on 22 August. Mr Jones did not see the claimant after 22 August. He tried to ring her on several occasions but without success. If she did get the suspension letter it is not known if it told her the contract would be at an end after three months if there were no documents.

24. On the other hand, the claimant knew she had been asked not to attend work, because she did not, and knew too that she was not being paid.

25. She also knew that she was expected to produce documents confirming her right to work. On 2 September 2016 K Reeves told the claimant it was in her interest to bring in documents. On 8 K Reeves sent a text to the claimant with her email address, adding "once this sent to me I will forward to a chart they will check this" and later "I haven't received anything yet". The next text is from the claimant on 13 September "hi the number is (020) 8672 8779 and the name is Sandy thanks". These are the details of the claimant's solicitor. Ms Reeves said in evidence at the respondent did not contact solicitors, "otherwise we would do nothing else all day", and made it clear that employees were expected to make their own enquiries and bring in their own documents. The answer to this text was "thank you?" which by its query is ambiguous in meaning. On 25 September Georgina Kelly Williams had a

discussion with the claimant by telephone. She noted the claimant said she was "just waiting to hear from Home Office". She advised the claimant to contact the Home Office again to get an update.

The Dismissal

26. Hearing no more from the claimant, on 3 November 2016 the respondent, in the name of Jason Jones, wrote to her saying:

> "I write further to your suspension on 17 August 2016. In the letter you received confirming your suspension, I confirmed to you that as you are unable to provide us with sufficient evidence of your right to work in the UK, you would be suspended from maximum 3 months, i.e. until in order to provide you with sufficient time to obtain and provide Karelian with proof of the right to continue to work in the UK. Despite us providing you with this opportunity to resolve the situation, you have still not provided us with the evidence required for us to allow you to continue in employment with Karelian, therefore, I wish to invite you to a meeting at Verizon… on Tuesday 15th November… Please contact me no later than Tuesday 8th November to confirm attendance".

27. This letter tells the claimant that she had on 17 August been suspended for 3 months, and that she was to come to a meeting. She took no steps to complain that she was not aware that she had been suspended 3 months, or that she had not received a letter. Without access to suspension letter, it is not possible to say whether she had been told that at the end of the 3 months her employment would be terminated if she could not demonstrate the right to work, and this 3 November letter does not tell her, though many employees would be suspicious. Viewed overall, the suspension letter, if sent, probably did not say in terms that her contract would end after three months, because the 3 November does not mention dismissal as an outcome, and because the respondent held the view if she could not produce the documents the contract was void for illegality (see on). If it followed the words on the 3 November, it will have mentioned suspension for a *maximum* of three months, indicating to an attentive reader that after that the contract would end or the employee returned to work; the latter is improbable if she had not produced documents.

28. The claimant did get the letter; she did not confirm she would be attending, and she did not attend. Mr Jones telephoned her at the time of the meeting, as she had not come, and she said she was not feeling well. She did not say she was depressed; she did not say her solicitor was going to write to him about her position; she did not ask for the meeting to be put off.

29. He and Ms Kelly Williams proceeded to discuss the claimant's case in her absence and on 16 November a dismissal letter was sent to the claimant in Mr Jones's name saying:

> "I write further to my previous letter sent in August ..
> which recited that she was told she was suspended for 3 months to provide documents) and went on "despite us providing you with this opportunity to resolve the situation, you have still not provided us with the evidence required for us to allow you to continue in employment with Carillion. I can therefore confirm that your employment will be terminated with immediate effect some other

substantial reason, on the grounds that you do not have the entitlement to remain in employment in the UK in accordance with the immigration Asylum and nationality act 2006. Your contract of employment with Carillion is void for illegality on the basis that it is prohibited by statute and on this basis you have no right of appeal against this decision".

30. Various witnesses explained that the respondent had a policy of dismissing if after three months employees could not show the right to all work. Mr Jones may not have had authority to dismiss of his own initiative, but assisted by Ms Kelly-Williams, there was contact with head office who authorised the decision.

31. On 7 December the claimant solicitors were informed of the date of appeal hearing. On 8 December solicitors wrote to Mr Jones referring to letter 3 November (the invitation to the hearing, not the dismissal letter), and stating that she had appealed the decision from the Home Office on 16 December 2016 and is waiting for it to be tested. Meantime she had valid immigration status and was allowed to take up continued employment. It gave the Home Office number for prospective employers to contact eligibility, and added her Home Office reference number.

32. Mr Jones passed this to the HR Department at head office, where a Lisa Crocker replied on 29 December 2016 that she would make arrangements for the content of the said letter to be investigated next week and a response will be provided in due course. No further response was forthcoming.

33. The claimant has not worked since, nor has she claimed benefits. In the bundle is a letter from the GP dated 5 December 2016 which says she has been suffering from depression the last few months because "she has not been able to work for the last 9 months".

34. The claimant speaks English; her solicitor had not applied for an interpreter. In tribunal she was able to read some of the documents. She can send texts. She does not use email, and she needed help writing a letter. Giving evidence, she was at times upset, and may have been affected by anxiety. When answering questions she was reserved, rarely forthcoming. It was not possible to understand whether she had received a suspension letter or not – first saying that they gave her a letter in August, then that she had forgotten everything. Asked twice whether she knew she would be dismissed if she did not produce the documents, she spoke so softly it was hard to know if she agreed or not. She did not discuss this in either of her two witness statements. She has not said in terms that she did not know the meeting might or would result in her termination.

35. She was asked why she did not tell any of the respondent's staff with whom she was in contact after 17 August that her application had been refused and that she was awaiting a hearing for her appeal. She said she had not told them because they had not asked.

Relevant law

36. The right to claim unfair dismissal is in section 98 of the Employment Rights Act 1996. It is for the employer to show the reason for dismissal.

Potentially fair reasons for dismissal are those relating to capability, qualifications and conduct, redundancy, and that the employee could not continue to work without contravention of a restriction imposed under an enactment. It may also be "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held".

37. Employing someone who did not have the right to work in the UK would contravene the immigration legislation. In fact, it appears the claimant did have the right to work, at least until her appeal was decided.

38. The difficulty for employers is that immigration status issues can be complex, and if they do employ people without the right to work, wittingly or not, they face substantial civil penalties, and even criminal liability. So it is important for employers to be able to show that they have carried out the document checks to provide them with the statutory excuses to avoid liability. **Bouchaala v Trusthouse Forte (1980) ICR 721** confirms that a genuine but erroneous belief that it would be illegal to employ someone because of their immigration status would be some other substantial reason justifying dismissal.

39. If the employer establishes a potentially reason, the tribunal was then, the section 98 (4) determine whether the dismissal was fair or unfair, which "depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and substantial merits of the case".

40. Case law has established that when someone is dismissed because of the belief held by the employer (here, in their immigration status), a reasonable employer will hold that belief genuinely, will have grounds for holding that belief, including having carried out such investigation as is reasonable in the circumstances. The test is whether a reasonable employer would dismiss that reason, not whether the employment tribunal would have dismissed.

41. In **Kelly v University of Southampton (2008) ICR 358** the EAT held that it may be unreasonable to dismiss someone who did not have leave to remain but had permission to work, if the reason for the erroneous belief results from the omission of the employer. The case also discusses whether it is always necessary to dismiss for contravention of the statutory enactment, and in particular that it may depend on how serious such a contravention would be. Finally, there is useful discussion of procedure and whether the alleged contravention:

> "is so clear and so serious that it is reasonable for an employer to dismiss peremptorily without following normal procedures will depend on the circumstances of the place. There are no doubt cases where procedural steps can be dispensed with prior to dismissal. But, even if it is reasonable to proceed speedily to dismissal, there is no reason why provision should not be made for an appeal. This may be of particular importance in a case where the legal state of affairs is disputed, always technical, or arises from some kind of oversight which can be remedied by the time an appeal would have been heard".

Submissions

42. The claimant submitted that the respondent should have checked with the Home Office for themselves, or approached her solicitor, and that this would have been reasonable investigation. It was also advanced that reasonable employer would know from the reference to meeting her husband's documents that it concerned an EEA national. It was also submitted that it was not clear who made the decision (the letter went out in the name of Mr Jones, but his evidence was that he did not have authority to dismiss anyone), but the claimant did not understand what they wanted, and that they did not provide a right of appeal or take action on the solicitor's letter showing that she had the right to work.

43. The respondent argued that the claimant never said that she had been refused and was appealing, so they had every reason to think that as the letter was more than 6 months old, the position was suspicious, particularly as, when time went on, she did not produce the further letter certifying an application which the Home Office guidance to employers suggested would be forthcoming if the application was still pending. It was also submitted – but there was no evidence on the point – that they did not know she was appealing, the respondent did not know to obtain a positive verification notice, nor, it was said was there any evidence that if they applied for one now they would get it. Some employers would dismiss straightaway if the employee could not produce documents showing the right to work, and then allow an appeal if they were later produced. The respondent chose to suspend and allow an employee 3 months in which to produce documents, a time long enough for an employee to contact the Home Office or solicitor and obtain what was needed, despite, it was submitted, being at risk of an offence employing even someone suspended without pay.

Discussion and Conclusion

44. In the finding of the tribunal, dismissal of an employee subject to immigration control because she does not produce documents showing her right to work is dismissal for some other substantial reason. The civil penalties and risk of criminal offence if the employee is without the right to work are certainly substantial, and carry reputational risk for the business too. Legislation has delegated responsibility for checking employment status to employers; there are clear directions what they must do to escape penalties if they get things wrong. Employers have good reason to worry about the consequences if they have not complied.

45. The claimant suggested it is the employer's responsibility to find out what her employment status is if the documents are not produced. In the view of the tribunal, a reasonable employer need not do this. Immigration law is complex, and subject to ongoing changes responding to public concern. Employers cannot be expected to keep abreast of it all. It is reasonable for employers to rely on the Home Office guidance on the risks they run and what they should do to avoid them.

46. It is also reasonable for employers to ask employees to produce what is needed, rather than for employers to make enquiries for them. If an employee has a solicitor who is acting in the immigration matter, it is reasonable for the

employer to expect the solicitor to write with the information needed if the employee cannot; it is not reasonable to expect the employer to make the approach. An employer making the approach will need to get written authority from individual employees to show before the solicitors will be able to give them information, employers may spend a lot of time on the phone trying to reach relevant personnel; many employers have large numbers of staff who are migrants, making the potential workload very large.

47. The claimant argued that when she provided her solicitor's phone number or Home Office number by text the respondent had undertaken to make these enquiries for her, by not telling her they would not. But in the Tribunal's finding the employer always made it clear that it was for the claimant to ask, and she understood this, because she drafted and have sent the letter 22 August. It is unfortunate respondent gave her the wrong email address, but does not explain why she could not ask her own solicitor to explain the position to her employer if she could not.

48. It is also hard to accept that responsibility should shift to the employer when the claimant held back from telling them there was a pending appeal. According to the 2016 guidance, without this information, including the appeal date, they were unable to get the PVN (positive verification notice) needed. If the respondent advised her to apply for a fresh certificate of application because the 2015 letter was over 6 months old, that was because they only knew from her that she had applied and was still waiting.

49. Did the respondent carry out a reasonable investigation? In the Tribunal view, they did. The claimant was made aware of what was wanted, and when the document produced were more than 6 months old, she was told to apply for another one, and she did. It is unfortunate that she was provided with the wrong email address, but she had plenty of time to chase up a response, which normally comes in 1-2 weeks, and in chasing is likely to have discovered the correct address and put it right. In any case, even if her request had reached the Home Office, she is unlikely to have been given a further certificate of application, because it had been refused, so it matters not that she had the wrong address. It is hard to see how the employer could reasonably have investigated her status pending appeal when she did not tell them she had been refused and had appealed. To say she did not tell them because the employer did not ask is unhelpful. The employer had no reason to ask when she had just produced a certificate of application, which indicates to reasonable people that an application had not yet been answered. It is not the whole truth. It is reasonable for an employer to expect an employee to be forthcoming when both sides know why the employer has to know about the right to work, and the employer should not have to interrogate an employee on the basis that she might have something more to say which would help him discover the position and no reason to think there is more to know.

50. What is troubling is that the claimant may not have known she would be dismissed if she did not produce documents or an explanation by 17 November. She was on notice by the letter of 3 November that something was up. The letter makes no mention of termination. Did she know it was serious?

51. The evidence that she did know it was serious lies in her solicitor's letter of 8 December. It refers to the letter of 3 November inviting her to a meeting, not

to the letter of 17 November dismissing her, and it makes no reference at all to the dismissal which had taken place three weeks earlier, nor ask for the matter to be reviewed. The claimant had considered the matter serious enough to go to her solicitor.

52. It might be argued that if her solicitor had known she was at risk of termination he would have sent this letter *before* the meeting, though it is troubling that on 7 February 2017, well after dismissal, the solicitor wrote to the Home Office saying she had been suspended from work for not producing valid documents, but not that she had been dismissed. So this is inconclusive as to whether the claimant knew she was at risk if she did nothing.

53. Why was the claimant not sent a letter warning her she might be dismissed, or told she could be accompanied, or offered an appeal? The right to be accompanied in the Employment Act 1999 applies only to disciplinary or grievance meetings and this was neither. The ACAS Code on Discipline and Grievance provides for an appeal. The Code states it applies to discipline and grievance, and that it does not apply to redundancy, and is silent on other reasons for dismissing. The respondent's explanation is in the dismissal letter, asserting her contract was void for illegality, and on that basis she had no right to appeal. In fact the contract was not void for illegality, because until her appeal rights were exhausted she could continue to work lawfully. The lack of statutory excuse *if* she had been working illegally not make her contract unlawful.

54. A dismissal procedure must be fair even if it does not follow the requirements of the ACAS Code. Was it fair not to allow her a second chance to establish she did have the right to work? The respondent argues that by giving her three months to establish her after she had been unable to produce the documents she had been given a fair chance. The claimant says that when her solicitor did write, that was tantamount to an appeal, and the respondent took no action. The respondent does not explain whether action was taken or why not. The Tribunal concludes that it is not fair that an employee is not told that her contract will be at an end if she does not take action, but must deduce it from what was said about the length of suspension, if that defect cannot be cured by reconsidering the decision when the employee does wake up to the consequences and then demonstrates she can work lawfully. The discussion in **Kelly** is useful. If the letter had been clear as to the consequences, and she had three months to prove her status, that would probably have been fair, but the combination of not spelling out the consequences and not reviewing the decision when the claimant did provide details of her pending appeal made the process unfair.

55. In consequence the dismissal was unfair.

Contribution

56. The respondent argues that the claimant contributed to the dismissal by 100% by failing to tell them at any stage before 8 December, 3 weeks after dismissal, that she had been refused and had appealed.

57. Section 123 (6) says that where the Tribunal finds that the dismissal was to any extent caused or contributed to any action of the complainant, it shall

reduce the amount of the compensatory award by such proportion as it considers just and equitable regard to that finding.

58. The claimant's explanation for failure to tell the respondent the position is unsatisfactory, and was lacking in frankness. Possibly the reason why she did that is because she believed she did not have the right to work and wanted to let sleeping dogs lie. Had she told them, they could have checked, and if the Home Office code and guidance are to be believed, they would have got a PVN and she could have resumed work. On this basis, the contribution was complete, but allowance has to be made for the lack of any appeal or reconsideration when her solicitors wrote after dismissal. Had they investigated in January 2017, the claimant is likely to have been able to return to work, and would still be working, at least until November 2017, and possibly beyond, depending on the outcome of the immigration appeal. On this basis, the compensatory award should be reduced by 60%. This takes account of her lack of frankness, and the fact that she must have suspected that termination would follow at some point soon, if not on 17 November.

59. The respondent does not argue that the claimant conduct should reduce the award.

60. At the date of dismissal the claimant was aged 44 and had been employed 7 years. The basic award is 8 ½ weeks at £120 per week, £1,020.

61. On compensatory award, the claimant has given no formal evidence about what happened after she was dismissed, but the schedule of loss says that she has not been able to find employment. There was also a suggestion that she had been to depressed to look for work. The GP letter of 8 December said she was finding it hard to sleep, tearful and having tension headaches, and "feeling increasingly hopeless and down". The claimant did not go to the meeting on 17 November could suggest that if she was not fit to go to a meeting she was not fit to clean offices then either. These issues: whether the claimant was fit to work, and whether she has made efforts to find work, must be explored in evidence.

62. A contingent hearing for remedy was set at the hearing for 9 October. On reflection that is too soon, because any assessment of future loss might have to take account of the outcome of the appeal. Accordingly the remedy hearing is relisted for Thursday 18 December, unless the parties are able to agree a compensatory award in the interim, in which case they should inform the Tribunal office.

Employment Judge Goodman
7 August 2017