Case Number: 2206112/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mrs A Nsiah-Nimarkoh	**v**	**Templewood Cleaning Services Ltd**

Heard at: London Central

On: 25 - 26 October 2017
In chambers: 27 October 2017

Before: Employment Judge Lewis

Representation

For the Claimant: In person

For the Respondents: Ms S Stuart, HR Manager

Interpreter (day 2): Mr F Osei

RESERVED JUDGMENT

1. The claimant was unfairly dismissed.

2. The claimant is awarded **£4863.60** basic award plus **£4474.33** compensatory award (ie £4124.33 for loss of earnings from 10 February 2017 - 24 August 2017 plus for £350 loss of statutory rights).

3. The recoupment regulations do not apply.

REASONS

Claims and issues

1. The claimant brings claims for unfair dismissal. The issues are:

   1.1 Was the claimant employed on a zero hours contract? The respondents state that she was.

   1.2 Has the claimant been dismissed? The respondents argue that she remains engaged under a zero hours contract.

   1.3 If she was dismissed, was the dismissal unfair?

   1.4 If the claimant wins, compensation. The claimant does not want re-instatement.

Employment tribunal procedure

2. The tribunal heard evidence from the claimant, and for the respondents from Wilber Sosa, Kim Perry and Kelly Sagredo. Each of the witnesses submitted a witness statement. There was also a witness statement from Michael Sarpong in the agreed bundle, which he had provided to the claimant's solicitors, and was signed on 16 August 2017. Mr Sarpong did not attend the tribunal to give evidence. I therefore relied on what he said to a lesser degree than I would have done if he had been present and available for questioning.

3. There was an agreed trial bundle of 188 pages and the respondents provided a written opening submission.

4. The claimant is Ghanaian. She cannot read or write in English. Her witness statement, such as it is, was prepared for her by her previous solicitors, who also wrote her claim form. I asked at the start of the hearing whether she felt able to give evidence in English. She was somewhat taken aback that she would have to give evidence at all. I explained that otherwise I would not hear her version of events. I asked whether she felt able to go ahead or whether she would like to postpone and come back another day when the tribunal would arrange for an interpreter. I gave her 10 minutes to speak to her husband in the waiting room. On return, she said she would like to go ahead. I said the tribunal would try to arrange an interpreter for day 2 anyway, and it was agreed we would leave the claimant's evidence until day 2. We finished soon after lunch on day 1 as the respondents' witnesses had completed their evidence.

5. The claimant gave evidence on day 2 through the interpreter. As she could not read her witness statement, I took her through all her evidence verbally.

6. The claim was for unfair dismissal. Although at the meeting on 9 February 2017, there were some accusations of racism, the claimant's tribunal case is not race discrimination.

Fact findings

7. The respondents provide cleaning and other specialist services to a variety of clients. They employ approximately 650 employees, including 120 on The Office Group contract.

The length of continuous service

8. The claimant's employment started on 3 February 2003 as a cleaner. She says she has worked continuously since that date. The respondents say there is evidence that she has not. There are a large number of monthly pay slips in the trial bundle generated by the respondents. The pay slips start 30 April 2007 at Ventham. On 31 January 2009, they change to St Helens. On 31 December 2012, they change again to Warnford Court. There is no break in the monthly payslips at the point of these location changes.

9. Ms Perry says there must have been a break in service in January 2008, because there is no payslip for that date. The claimant denies there was a break. A missing payslip in relation to one month nearly 10 ago is not sufficient for me to find there was a short break in service, let alone its length, the reasons, and what that might have signified.

10. Ms Perry suggests there must have been a further break in 2011. This is because the claimant completed a P46 on 12 March 2011 She points out the pay slip dated 31 March 2011 is for a particularly large sum, which suggests some kind of payment on leaving. In addition, the 31 January 2011 payslip is only for 80 hours + 4 hours holiday and the 28 February 2011 payslip was not assigned to the Warnford Court contract because unlike the other payslips, it does not say 'Warnford Court' in the body of the slip, but just 'salary'. At the top, it says 'Department: Warnford Court', though the respondents say this was just the department she was attached to. Ms Perry accepts she has no personal knowledge of this matter, so what she says is speculation.

11. The claimant says there was no break at this time. I accept her evidence. There is a pay slip in the previous month and in the following month. Hours were variable at all times, so that tells me nothing. Although there is the unexplained P46 form, I still find it far too speculative to say there was any break at this point or what it might have signified.

12. There are various other documents in the trial bundle, which do not make the position any clearer. There was an undated new starter form which seems to have been faxed on 22 January 2010. The place of work is noted as St Helens. On 23 August 2011, an office assistant gave a reference for the claimant to an unknown person, stating the

claimant's date of joining was 4 January 2010 and she was still employed. On 12 September 2011, the then HR manager gave a reference request stating the date of joining was 3 February 2003. I cannot draw conclusions from any of this. I did not hear from anyone at the respondents who was able to give a first-hand explanation of the documents. Apart from the one missing payslip in January 2008, payslips were continuous. The claimant says she was employed continuously from 2003 and in the absence of anything conclusively indicating otherwise, I accept her evidence that this was the case.

The claimant's hours

13. The claimant was employed in a series of different buildings: Queen Victoria Street, Beaufort House, Ventham, St Helens and, from 30 June 2010 until 9 February 2017, Warnford Court. She moved on each occasion at the request of her supervisors/managers. She was issued a written contractual document when she started employment, but she did not keep a copy. She was not issued any document on her subsequent moves. However, she filled in a pro forma statement of terms and conditions to notify her new name at some stage following her marriage. This document is headed 'Statement of Terms and Conditions of Employment'. The claimant's husband completed it on her behalf. The claimant's name is at the top but it is not signed or dated. The pro forma is a version issued February 2009.

14. The Statement notes the normal place of work as 'within the London area'. Paragraph 5.2 says:

> 'This is a zero hour's contract, you will be required to work allocated hours set out in your availability matrix. Once you have agreed to these hour either verbal or by contract [sic], failure to attend work will be dealt with under the disciplinary procedure.'

Neither the claimant nor the respondents were able to tell me what 'an availability matrix' is. The statement goes on to say that she will be provided with notice of hours of work, but there may be occasions where she will be required to work at short notice. Paragraph 5.4 says:

> 'Any overtime agreed either verbally or contracted, you will be required to work, and failure to attend will be dealt with under the disciplinary procedures'.

15. The claimant says her husband explained to her the meaning of the typed words on the Statement including the paragraph about zero hours. She says she believed that was not true because she had contracted hours of 25/week.

16. The claimant says that when she was taken on, she was told she would work 5 hours/day, 5 days/week. She says this continued throughout her employment, although Michael Sarpong ('Charlie'), the supervisor at Warnford Court, only put her down for 4.5 hour shifts, while she was

paid for 5. The claimant also says she was never asked to work overtime.

17. The respondents deny the claimant had fixed hours of 25/week. They say her hours were adjusted up and down as needed. The payslips in the trial bundle start showing the number of hours worked and the hourly rate from 31 January 2009. From that date, the monthly hours are (discounting months with holiday) 100, 92, 88, 92, 88, 80, 84, 84, 96, 90, 91, 89, 92, 88, 84, 105, 110, 105, 110, 110, 115, 121, 100, 105, 100, 50, 110, 115, 20, 110, 100, 110, 115,110, 105, 100, 110, 110, 105, 105, 105, 105, 159, and 126. I have not noted the final month, which was cut short. The pay slips show that the claimant was paid for the number of hours recorded and the claimant confirms she received the sums written at the foot of the pay slips. 25 hours/week would equate with 100 hours/month. The claimant says she did not really notice or think about this variation. She says she was sometimes asked to help out at other places when staff were short. She could not explain why the payslips say she often worked less than 100 hours/month or less than 90 hours (which would be the total on 4.5 hour shifts)

Work standards at Warnford Court

18. There was a team of 6 or 7 cleaners at Warnford Court, including the claimant. The claimant's job was cleaning toilets. Mr Sarpong reported to the area night supervisor, Jatzon Maldonado.

19. Kim Perry joined the respondents on 5 December 2016 as Operations Manager, looking after the client portfolio for The Office Group contract. This was a £2.5 million contract, with the respondents looking after 25 buildings including Warnock Court. Her predecessor, Brian Tovey, was being removed from the account.

20. Ms Perry was briefed in a handover by her own line manager (the Operations Director) and by Mr Tovey. She was told there were difficulties with the contract. They had previously lost the contract on two buildings because of poor standards and there were now problems with Warnford Court. The Office Group had introduced KPIs (key performance indicators) and were becoming far more demanding. The building manager at Warnford Court was constantly complaining. The Operations Director told Ms Perry that The Office Group had asked before Christmas 2016 for the Warnock Court team to be replaced. He had instructed Mr Tovey to do this, but it had not yet happened.

21. Ms Perry visited the site on 16 January 2017 and on one other occasion to carry out an inspection and take stock. Normally she works days, and this involved night visits. She says she spoke to each member of the team including the claimant. The claimant insists that she first met Ms Perry on 9 February 2017.

22. From January 2017, Ms Perry moved Kelly Sagredo across to supervise Mr Sarpong and raise standards. Ms Sagredo had joined the respondents on 4 October 2016 as a supervisor.

23. In her witness statement, Ms Sagredo said she met the team 'on several occasions' to provide training, and that she informed the team that if they did not improve cleaning standards, the respondents would lose the contract. Ms Perry also said, in her own witness statement, that Ms Sagredo attended Warnock Court 'several times' to support the team and train them to meet standards.

24. In the employment tribunal, Ms Sagredo said she attended the site for an initial continuous two week period, showing the team what should be done and emphasising that the contract was at risk if standards did not improve. After that, she said she would visit a couple of times/week.

25. I prefer the claimant's evidence on this point, ie that Ms Sagredo visited broadly twice a week prior to 9 February 2017, in some weeks not visiting at all. This is consistent with what both Ms Sagredo and Ms Perry said in their witness statements. A two week solid period would not be described as 'several times' or 'on several occasions'.

26. This exaggeration of the time spent with the team, makes me also suspect that the evidence regarding the degree of training given to the team has been exaggerated. The evidence was also vague as to what 'training' was given to whom as, apart from a few small examples, the references were constantly to the 'team' and 'work standards' without differentiation.

27. I therefore accept the claimant's evidence that she did not meet Ms Perry before 9 February 2017. I also find that Ms Sagredo did not do any systematic training of the claimant. I believe Ms Sagredo was on the premises, inspecting, carrying out cleaning herself, and telling team members what to do and not do on an ad hoc basis. I do accept Ms Sagredo's evidence that she told the claimant on one occasion that the toilets were not clean, with dust at the top of the partitions and paper behind the sanitary bin. This appears to have been an issue, since the claimant refers to a visit by Mr Maldonado and Ms Sagredo together, when she asked Mr Maldonado if there was anything wrong with the toilets, and he said no. I also accept Ms Sagredo's evidence that the claimant said she had been cleaning toilets for a long time and did not need to be told what to do. The reason I believe this is because the claimant said something similar to me in the tribunal hearing.

28. The claimant was told by Mr Sarpong that the client was making complaints, though he did not say the complaints were about the toilets specifically. No one told the claimant that the respondents were worried they might lose the contract on the building.

29. Standards did not improve. The building manager at Warnford court continued to complain to Ms Perry and make a log of his complaints for

his own managers. A couple of items had gone missing at Christmas, though this was a contract-wide issue for The Office Group.

The verbal warning

30. On 1 February 2017, Ms Perry emailed the respondents' administrator, Linda Shere-Massey, asking her to write to the Warnford Court night staff, informing them that the client had asked them to change their start time from 8pm to midnight from 1 March 2017. She also asked for each of them to be sent a letter stating that the standard of cleaning in the building needed to improve as a matter of urgency or disciplinary action would be taken. This followed on from her night inspection with each of them on 16 January 2017. This led to an enquiry by the HR Manager, Miriam Cambray, as to whether the staff had been given a verbal warning. Ms Perry replied that she had walked the floor with each of them on 16 January, showing what was expected of them and asking why the issues had not been resolved 'so I guess you could call this a verbal warning?'

31. Ms Perry then wrote to the claimant on 9 February 2017, 'to record in writing the verbal warning' which she said she had given the claimant regarding cleaning standards. The letter said that disciplinary action would be taken if standards did not improve. Ms Perry had not in fact given a verbal warning or followed any disciplinary process in relation to it. All the team at Warnock Court were given the same letter.

32. The claimant had never previously received any warnings from the respondents.

33. On 9 February 2017, Ms Cambray, wrote to the claimant (and the other night staff) stating that at the client's request, her start time would change from 8 pm to midnight from 1 March 2017. This was the second occasion the start time had been put back. Originally it had been 6 pm and then the claimant had been required to put it back to 8 pm.

The meeting on 9 September 2017

34. In the morning of 9 February 2017, Ms Perry went to the site together with Mr Tovey, Mr Maldonado, Ms Sagredo and Wilber Sosa, to help with the different languages spoken. Mr Sosa had joined the respondents on 1 November 2016 as Day Site Supervisor.

35. Mr Sarpong was due to start shift at 8 pm, but he had not arrived, so the meeting with the team went ahead without him. By the time he arrived at 9 pm, the meeting had finished.

36. Ms Perry informed the team that they were being removed from site with immediate effect at the client's request due to complaints from the client. They were told to return their access cards and they were not to come back to the building. The team became very upset and voices were raised.

37. Ms Perry says that she told the team that the respondents would look for vacancies. The claimant says she did not. Ms Sagredo and Mr Sosa did not refer in their witness statements or oral evidence to such an offer having been made. On any account, the team were not asked individually what kind of vacancies they would be prepared to accept and no arrangements were made for keeping in touch. I therefore find that there was no mention of redeployment.

38. The claimant believed that she and the rest of the team had been dismissed.

39. Ms Perry spoke to Mr Sarpong alone when he arrived at 9pm. She offered him an alternative post which had just come free. The claimant did not know about this offer. Mr Sarpong says in his witness statement that the offer was made only after an argument, when he refused to accept that he had been dismissed and refused to leave the premises, having called Ms Perry racist. As Mr Sarpong did not attend the tribunal, I cannot make any precise findings about the circumstances leading to the alternative offer. However I find it unlikely that he invented this entire discussion.

40. A new team moved onto the site immediately. Ms Perry told the tribunal that the decision to remove the current team had been made a couple of days before 9 February 2017 and that it had been easy to quickly put together a new team by moving around existing staff and using staff waiting for work. When I asked whether that meant there were vacancies where the claimant could have been redeployed, she said there were not because those existing staff they had moved over were doing Warnock Court in addition to their existing shifts. I find that surprising.

41. The claimant had asked for a letter to take to the DSS. On 10 February 2017, Ms Perry sent letter headed 'Dismissal – Warnford Court'. It stated that further to continuing complaints within Warnford Court which were causing major issues with their client, and following the warning the previous evening, with immediate effect she would 'no longer be required to work within the building'. The letter continued 'Templewood Cleaning Services will do everything possible to relocate you to another site should we have any vacancies available.' The claimant understood this letter to be confirmation of her dismissal.

42. On 17 February 2017, the claimant instructed solicitors. In March 2017, the respondents appointed an HR Manager, Ms Stuart. Ms Stuart was concerned that the 10 February 2017 letter was 'confusing' because it was headed 'Dismissal'. She instructed 'clarification' to be issued (to quote Ms Perry's words in her witness statement).

43. On 13 March 2017, Ms Perry wrote a letter headed 'Duties at Warnford Court'. It started, 'Further to the letter you received dated 10 February 2017, I am writing to offer some clarity around where there may have

been some confusion'. The letter said the scheduling team was currently working through its resourcing plans and would give the claimant the opportunity to cover duties as soon as some suitable hours became available.

44. Ms Sagredo says she asked her colleagues if they had any hours coming up to accommodate any of the team. They said they would let her know. She did not suggest she did anything else. She said it was not top of her priorities.

45. In fact, no offer was made to the claimant until a text message sent on 7 September 2017 offering 15 hours/week, following a discussion at the preliminary hearing on 17 August 2017 in front of EJ Glennie, when the claimant had said, 'They could have come back and at least offered something, it didn't need to be my full 5 hours'.

46. The message on 7 September 2017 simply said, 'Hi a message for Abina, we have 15 hours per week available at Albert House EC post code about 30 minutes travel if interested let me know. Sharon Stuart HR Manager'. Then the next day, another text message, 'Hi a message for Abina please let me know if of interest by 3 pm Monday 11 September. Thank you. Sharon Stuart HR Manager for templewood.'

47. The claimant did not respond. She had lost all trust and confidence. She did not want to work for the respondents again.

48. I find that the respondents made no efforts to look for work for the claimant at all. I find it inconceivable that an organisation the size of the respondents, employing what is likely to be a high turn over workforce, found no vacancies at all for 7 months. I note that they were then able to make an offer only 3 weeks after a discussion in front of EJ Glennie at a preliminary hearing in these proceedings. Ms Perry said that looking for vacancies was not the top of her priority list.

Since her dismissal

49. The claimant was very depressed following her sudden dismissal. It took her two or three months before she felt able to start looking for work. She has gone to places recommended by her friends without success. She has been helped to make some internet applications. Her confidence is low, especially given her age and that she cannot speak good English. This has prevented her signing on with any agencies, though she now intends to do so.

Tribunal fees

50. The claimant paid the £250 issue fee, but she was not required to pay any further hearing fee.

Mr Wilkinson's email

51. There is in the bundle an email from the Warnock Court building manager, Oliver Wilkinson, dated 21 August 2017. The email is plainly written for the purposes of this tribunal. It says that there had been 31 issues and examples of underperformance between 1 January and the changeover, and after the first two weeks with the new team, there was a huge improvement.

Law

52. To claim unfair dismissal under the Employment Rights Act 1996, the employee must prove that she has been dismissed.

53. In deciding whether an employer's words constitute a dismissal, it is necessary to look at the words in the context of the surrounding circumstances. Events before and after the utterance of the words may be relevant. If the words still appear ambiguous, it is then necessary to consider how they would have been understood by a reasonable employee.

54. Dismissal because of pressure from a third party to dismiss can amount to SOSR (some other substantial reason). This covers not only a direct instruction from a third party, but where the third party pressure amounts to the same thing, eg by demanding a higher standard of work. The employer does not have to establish the truth of the customer's allegations or agree with the request to transfer or dismiss. However, the employer must do everything it reasonably can to avoid or mitigate any injustice to the employee, eg by considering whether redeployment is possible.

55. Whether dismissal will or will not result in injustice to the employee and the extent of that injustice is a very important factor of which the employer has to take account. Matters which affect the justice or injustice to the employee of being dismissed and which the employer will have to take into account include the length of time during which the employee has been employed by him, whether the employee's service has been satisfactory, and the difficulties the employee may face in obtaining other employment. (Dobie v Burns International Security Services (UK) Ltd [1984] IRLR 329, CA]. As Harvey points out, it is important to bear in mind that although the Court of Appeal says this is a very important factor, it does not say it is a decisive factor. Ultimately the reasonableness of the dismissal depends on the reasonableness of the employer's reaction to the predicament.

Conclusions

Was the claimant employed on a zero hours contract?

56. The claimant says she was employed to work 25 hours/week. The respondents say she was employed on a zero hours contract.

57. I find that the claimant was employed on a zero hours contract. These are my reasons. First, the statement of terms and conditions where the claimant notified her married name explicitly says that it is a zero hours contract. The claimant noticed that paragraph at the time, although she did not agree with it. I have taken into account that the statement is not headed 'contract of employment' and it is not signed by the claimant. However, it is the only document we have and it is good evidence of what the contractual position was.

58. Second, the payslips show that the claimant's hours were constantly going up and down. They not only went higher than 100 hours/month (25 hours/week), but on at least 16 occasions, they went below 100 hours/month.

59. Third, the respondents believed the claimant, along with the rest of the team, was working on a zero hours contract. Of course the employer's belief might have been wrong, so this is not a particularly strong reason compared with my first two reasons.

Was the claimant dismissed?

60. The claimant says she was dismissed on 9 February 2017. The respondents say that she was not.

61. I find that the claimant was dismissed. I believe this was Ms Perry's intention on 9 February 2017. She knew the team were employed on zero hours contracts and she regarded them as having no rights to be offered anything else. She did not at that point mention relocation.

62. I have taken into account the fact that Mr Sarpong was offered an alternative position. However, there were a number of differences in his position. First, he was a supervisor not a team member. Second, a vacancy happened to have just come up to Ms Perry's knowledge. Third, he had a separate meeting with Ms Perry after the meeting with the team, having arrived late. Fourth, if even some semblance of his account of the discussion on 9 February is to be believed, he was particularly difficult and accused her of being racist and generally refused to cooperate until pacified by an offer. I give less weight to this fourth factor because, as I have said, I did not hear from Mr Sarpong in person. But I think it unlikely he would have invented the entirety of the conversation which he recounts.

63. My view is further confirmed by the letter of 10 February 2017. It is headed 'Dismissal – Warnford Court'. Although it says the respondents will do everything possible to relocate if vacancies become available, that is not inherently inconsistent with a dismissal. For example, it is quite normal for employers in redundancy situations to give employees

notice of dismissal for redundancy and add that they will continue to look for alternative employment.

64. Moreover, no offers of relocation or discussion regarding what type of vacancy the claimant might accept, took place following this letter.

65. I believe Ms Stuart recognised that the 10 February 2017 letter read like a dismissal letter. By that time, the claimant had gone to solicitors. The respondents' 13 March 2017 letter, ostensibly by way of clarification, was in fact a retrospective attempt to recategorise what had happened.

66. I therefore find that the dismissal was clear and unambiguous. If, however, there was any ambiguity, I find that a reasonable employee would understand that she had been dismissed given the lack of mention of alternative work at the meeting, unawareness that Mr Sarpong was offered anything, the word 'dismissal' on the confirmatory letter and the failure to offer or even discuss any vacancies.

Was the dismissal unfair?

67. The reason for dismissal was that the respondents were receiving continual complaints from the client at Warnock Court, culminating in a request to replace the cleaning team there. The respondents feared that if they did not replace the team, they would lose the contract on Warnock Court.

68. I accept the respondents' evidence that there were these difficulties at Warnock Court. If there were no problems, I do not see why Ms Perry would have sent Ms Sagredo to spend time at that building specifically, or why she would have wanted to replace the team. I would like to have seen complaint emails from the client, but in my experience from other cases of this kind, such complaints are often primarily verbal. Some of the problems referred to applied across The Office Group buildings as a whole, eg that of items going missing. But the complaints about cleaning standards were specific to Warnock Court. There is also the email from the building manager, Oliver Wilkinson, obtained for this tribunal, which says there were 31 issues from 1January until take over, and a huge improvement subsequently.

69. I also accept the respondents had reason to be anxious about losing the contract. The client's overall contract was large and valuable, and two buildings had previously been taken off them by the particular client.

70. However, I find the respondents handling of the situation to be unreasonable. By Christmas 2016, the client had requested the team to be removed. Ms Perry was told on handover in December 2016 that this must happen. She asked for a little time to take stock, but the decision had basically been taken.

71. Ms Perry's two visits to the site were in the nature of an inspection, rather than training, and she did not meet the claimant. Ms Sagredo

made several visits where she tried to monitor the situation, do some cleaning herself, and persuade the team to improve standards. She did not provide systematic training to the claimant, although she did draw certain areas to her attention. The claimant and the rest of the team were not particularly receptive. This was a new manager who they had not met before.

72. The claimant knew from Mr Sarpong that there were client complaints, although these did not specifically refer to the toilets, and she was not told the respondents were worried they might lose the building. She was never told formally what was at stake. There was a belated effort to write to her (and the rest of the team) on 9 February 2017, the very day of the dismissal. This suggested a verbal warning had been given, when it had not. Ms Perry's description of what was later described as a verbal warning, simply does not meet the definition. There was no 'warning' given about what would happen if things did not improve. Further, as we have said, Ms Perry did not meet and speak with the claimant.

73. The respondents gave no thought at all as to the injustice to the claimant of the dismissal. The claimant had a clean disciplinary record apart from a wrongly described verbal warning given on the day of the dismissal. She had worked for the respondents since 2003 for a series of managers and supervisors who had presumably been happy with her work. Ms Perry and Ms Sagredo were new to the company. They had not met the claimant or any of her team prior to January 2017. The claimant saw Ms Sagredo a few times prior to her dismissal and Ms Perry not at all.

74. The respondents treated the team as a bloc. That may have been inevitable because of the client's request to change the whole team, but it meant the claimant was not judged on her own terms. Indeed, the entire problem might have been down to the local supervision. Many of the complaints which were given as examples were nothing to do with the toilets. Ms Perry should have noted that the need to replace the whole team because of client pressure did create this injustice for the claimant.

75. Ms Perry did not give any thought to the fact that she was dismissing the claimant with no notice, or that the claimant at her age was unlikely to find a new job very easily. Indeed, Ms Perry and the respondents' other witnesses, were affronted when the team showed their anger at being told on no notice that they had no job and no income.

76. There was no individual meeting with the claimant. She was told of her dismissal, out of the blue, in a group meeting. There was no individual discussion with her about how she would manage. There was no thought given to providing any financial cushion. There was no one-to-one discussion (or group discussion) about alternative employment. The claimant was treated with utter disregard and disrespect.

77. The respondents made no attempt to find alternative vacancies for the claimant before the 9 December meeting. Ms Perry had known on hand-over that the team's days were numbered. The claimant was given no opportunity to put herself forward for other vacancies. I add that I have doubts that it was possible to put together a satisfactory new team on only two days' notice, but even if it was, I find it hard to accept that the transfer of certain internal cleaners did not lead to vacancies elsewhere. The evidence given about how and when the new team was recruited was far from transparent.

78. I believe that no reasonable employer would have handled the dismissal in this way. Any reasonable employer would have given the claimant clearer individual warning of what was at risk, with sufficient time for improvement. A reasonable employer would have provided more than cursory training. A reasonable employer would have taken care to speak to each individual on 9 December about the difficult situation and to enquire about what vacancies they might be interested in, and would have listened to their individual views. Most importantly, I believe a reasonable employer would have thought about the impact on the claimant, a long-serving employee with a clean record, and would have made greater efforts to find her an alternative vacancy prior to dismissal.

79. For all these reasons, I find the dismissal unfair.

Compensation

80. The claimant is entitled to a basic award. She was employed for 14 whole years. Her age at the date of dismissal was 59. The multiplier is therefore 21.

81. As there were no normal hours, a week's gross pay is the average over the last 12 weeks of employment. As payslips were monthly and the final payslip was unrepresentative, I have averaged the three monthly payslips before that. £1000.80 + £907.20 + 763.20 + 108 = £2779.20 divided by 12 = £231.60/week gross. 21 x £231.60 = **£4863.60** basic award.

82. I believe that if the respondents had not unfairly dismissed the claimant, they would have been able to find her an alternative vacancy with the same amount of hours and pay, after 9 weeks. I say this because they were able to make an offer on fewer hours only 3 weeks after the discussion at the preliminary hearing prompted them to do so.

83. During the 9 week period, the respondents would not have been required to pay the claimant, because she was on a zero hours contract.

84. The claimant was unable to look for work for two to three months due to depression caused by the manner of her dismissal. Thereafter she has made some attempts, but perhaps not as many as she could.

85. There are certain difficulties facing the claimant in finding new work because of her age and, to a lesser extent, her language difficulties. I do not think the latter is a big barrier because the claimant's English seemed to me to be at a level which would be good enough to secure employment of the kind she would like. The claimant has also lost some confidence as a result of the dismissal, which is compounded by her age. On the other hand, even with an ongoing recession, people do need and employ cleaners. The claimant has not looked everywhere she could. Balancing all these factors, I believe that if she had looked properly, she would have been able to find a new job at the same pay by 24 August 2017, 28 weeks after her dismissal.

86. I therefore award loss of earnings of 19 weeks net pay. Calculating 1 week's net pay over a 12 week average as above is £217.07 (947.42 + 840.81 + 816.62 = £2604.85 divided by 12]. 19 x £217.07 = **£4124.33** past loss of earnings.

87. I award **£350** for loss of statutory rights.

88. The respondents want me to deduct up to 25% for the claimant's failure to follow an internal grievance subsequent to her dismissal. I do not make any award for this. First of all, the claimant's dismissal was in reality for redundancy, and the ACAS Code does not apply to redundancy situations. Secondly, given the way the respondents dismissed the claimant without following any kind of acceptable procedure, I would not consider it just and equitable to penalise her for not appealing or following a grievance.

89. Regarding the £250 tribunal issue fee, this should be refunded by the government. The claimant is advised to check with the tribunal clerks how to register her interest.

Employment Judge Lewis on 27 October 2017