



Reserved judgment

# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**Respondent**

AND

Mr S Booth

Bridgestone UK Limited

## RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Birmingham

**ON** 6<sup>th</sup> and 7<sup>th</sup> September 2018

**EMPLOYMENT JUDGE** Coaster

### Representation

**For the Claimant:** Mrs C Sketchley, Solicitor

**For the Respondent:** Mr G Anderson, Counsel

## JUDGMENT

### **The judgment of the Tribunal is that**

1. The claimant's claim of unfair dismissal is well founded.
2. The claimant's compensation shall be reduced by 50% under Ss 122(2) and 123(6) Employment Rights Act 1996.
3. The assessment of compensation will be made at a remedy hearing to be listed.

## REASONS

### **Background and Issues**

1. The claimant was continuously employed by the respondent company from 22<sup>nd</sup> July 2010 as a Business Development Manager. The Respondent manufactures vehicle rubber tyres. The claimant was dismissed on 10<sup>th</sup> October 2017 and brings a claim of unfair dismissal. The proceedings are fully contested by the respondent company.
2. At the commencement of the Hearing the tribunal and the parties agreed the issues. According to the established case law, the tribunal would have to determine the case having regard to the guidelines in the well known authorities:
  - (1) British Home Stores —v- Burchell [1978] IRLR 379
  - (2) Iceland Frozen Foods Ltd --v- Jones [1982] IRLR 439
  - (3) Sainsbury's Supermarkets Ltd —v- Hitt [2003] IRLR 23

3. In short, the test in Burchell is agreed as follows:  
For our purposes, the dismissing officer of the respondent was Mr Sage.
  - (1) Did he hold a genuine belief in the facts found?
  - (2) Was such belief held on reasonable grounds?
  - (3) Did this follow a reasonable investigation?
4. Then, from the case of Iceland, the tribunal will determine whether the dismissal within the range of reasonable responses open to a reasonable employer in all the circumstances of the case?
5. Was the decision to dismiss overall fair pursuant to section 98(4) of the Act? This test is neutral. There is an initial burden of proof upon the respondent to show a potentially fair reason.
6. The respondent in this case asserted that it was on account of the claimant's conduct. There is a burden of proof upon the respondent, on the balance of probabilities, to establish such a reason pursuant to section 98(1) and (2) of the Employment Rights Act 1996 (the Act). Subject thereto, and applying the test set out above, was the decision
7. The tribunal is given judicial guidance in the cases mentioned above as to how to apply the statutory provisions. I do not repeat them again. I also looked at the ACAS Code of Practice on disciplinary and grievance procedures when coming to my judgment.

**Evidence**

8. I was provided with an agreed bundle of documents which I refer to as exhibit R1. An additional document page number 328A – E was added to the bundle by agreement at the commencement of the hearing. I heard evidence from the claimant; his wife, Mrs Gaynor Booth; Mr Keith Tomas, General Sales Manager and Mr John Sage, Human Resources Business Partner.

**Findings of Fact**

9. I make my findings of fact on the basis of the evidence before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time.
10. I have resolved such conflicts of evidence as arose on balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts and documents. Apart from Mrs Booth, there were at times credibility issues with the other three witnesses. In respect of the claimant this was because of the late and implausible explanations raised for the first time at the hearing for his conduct and also because of the ambiguity in his evidence as to whether he had or had not made such inappropriate sexual comments in previous training sessions. In respect of Mr Thomas and Mr Sage, their credibility was to an extent undermined by their denial that they had conducted any inappropriate discussions during the course of the disciplinary process. My findings of fact relevant to the issues which have been determined are as follows.
  - 10.1 The claimant, date of birth 26<sup>th</sup> August 1962, was offered employment by the respondent on terms set out in a letter dated 22<sup>nd</sup> July 2010 and the respondent's Staff Handbook which was stated to accompany the offer letter. The offer letter was signed by the claimant on 29<sup>th</sup> September 2010. The staff handbook in R1 was signed on 8<sup>th</sup> November 2010. There was no

dispute before me on the commencement date.

10.2 The claimant attended a variety of training courses between March 2011 and August 2016. In 2013 one of these courses was for 'training the trainer' and touched upon training how to train, the course focussing principally on electronic delivery of training such as setting up the laptop.

10.3 The claimant has received no training on equality or diversity either with the respondent or any other previous employer.

10.4 The claimant reported to Mr Keith Thomas (Mr Thomas) who in turn reported to Mr Mark Fereday (Mr Fereday). Mr Fereday reported to a director, Mr Farrell Dolan.

10.5 The claimant had gained great experience over 37 years in the automotive industry. The respondent had a shortage of retail experience. The claimant was not a full time trainer and his training of customers to date had been based on his acquired retail experience in the automotive industry. He had to that point initiated the training and applied his experience to deliver training tailored to his individual customer needs in an informal way. The training service the claimant provided had grown organically, developing from the claimant explaining the respondent's product range when visiting a customer's tyre depot, to training the staff on a one to one basis which then grew to bigger groups of staff without it becoming a formal class-room style of training.

10.6 In 2012 the claimant was apparently promoted to the position of Training Development Executive, reporting direct to Mr Fereday with effect from 1<sup>st</sup> January 2013. In fact, nothing changed in the claimant's duties and training remained a small and informally conducted part of his contractual duties. He remained reporting to Mr Thomas.

10.7 The claimant suffers from Crohn's disease. Mr Thomas and Mr Fereday were aware of the claimant's condition. There is no evidence that suggests it affected his performance before July 2017. The claimant said that he has always been able to control the symptoms.

10.8 The claimant had previously had a mini stroke for which he was referred to a consultant. He had also suffered a panic attack at Birmingham airport, requiring assistance after 3 days working in Ireland. Mr Fereday was aware of these incidences, including the medication the claimant was taking and its side effects. Mr Thomas and Mr Fereday had been very supportive at the relevant time.

10.9 There was no medical evidence before me of what medication the claimant was taking over what period, nor what were the side effects.

10.10 In 2016 the respondent was negotiating with Halfords, a significant customer, for the delivery of a training programme about the respondent's products to Halfords retail staff. Although the claimant had no experience of Halfords as a customer, in about October 2016 the claimant was selected by Mr Thomas and Mr Fereday to deliver the training to Halfords.

10.11 The claimant had a meeting with Mr Thomas on about 14<sup>th</sup> October 2016 in which the Halfords training programme was discussed and explained to the claimant. He was asked to take on the training role for Halfords. The claimant was reluctant to undertake the task. He did not believe he was sufficiently trained to deliver the Halfords training programme. Mr Thomas had every confidence that the claimant was able to deliver the training. The claimant was to have a free hand in organising the content of the training events to fit around his current workload and the claimant was assured that Mr Fereday would help support the claimant's existing customers so that he could concentrate on the Halford's training programme.

10.12 The claimant had a telephone conversation with Mr Fereday on 20<sup>th</sup> October 2016 about the Halfords training project. The claimant then raised questions about changes to his employment contract, pay, his position and pay grade, change of company vehicle to one fit for the purpose of carrying training equipment, reporting and measurement of the proposed role, what training support he would receive and whether sufficient training budget would be available.

10.13 With regard to the relevant issues, in response to these concerns about training support from Mr Fereday and Mr Thomas, it was confirmed that the claimant's needs would be regularly reviewed so that Mr Fereday would seek permission to be able to support the development of the claimant's training skills, such support (it was stated) having never been refused before. It was also confirmed that a budget had been provided to be managed and allocated by the claimant to support the role.

10.14 On 11<sup>th</sup> November 2016 the claimant met with Mr Thomas to discuss again the points that had previously been discussed. The claimant was still reluctant to take on the training role for Halfords which estimated would take up 85% of his time. Mr Thomas said that he would have to refer the matter up to the director, Mr Farrell Dolan, if the claimant refused to take on the training and stated that he did not know what would be the consequence. The claimant believed this comment meant that his job was under threat if he did not take on the Halfords' training programme.

10.15 Whilst the claimant did not believe that he was sufficiently trained to undertake the Halfords' training programme role, Mr Thomas believed that the claimant was competent to undertake it and only needed reassurance to deliver it.

10.16 In April 2017 the claimant and Mr Fereday met again to develop and agree the training day plan and what elements would be covered during the day.

10.17 By early May 2017 the content of the training programme was planned and agreed between the claimant and Mr Fereday and then agreed with Halfords. The training dates and locations were provided to the claimant by Ms Lorna Craig, the respondent's account manager for Halfords.

10.18 The claimant undertook no additional sales (or any other) form of training prior to commencing the Halfords training programme.

10.19 Initially Halfords had organised the training venues and other facilities such as catering, in liaison with the Lorna Craig. Halfords arranged the number of staff who would attend the training days. The numbers attending the training were variable, with some training sessions having very low attendance. The Halfords staff were often unhappy about attending a training day which affected their sales and therefore their bonuses. Mr Turbfield, Halford's Training Manager had commented to the claimant that he did not believe that training in tyres was an appropriate investment for Halfords.

10.20 The number of people and the training locations were often changed without notice to the claimant until the very last minute. Often meetings room were inadequate, either too small, too cold, too hot or without facilities.

10.21 The claimant prepared the training presentations from standard Bridgestone marketing materials with some additions of his own. There was no check on what he was presenting. Mr Thomas never attended a training event delivered by the claimant.

10.22 The claimant delivered training to Halfords' staff at a variety of locations on 22<sup>nd</sup>, 23<sup>rd</sup>, 30<sup>th</sup> and 31<sup>st</sup> May 2017; 20<sup>th</sup>, 21<sup>st</sup>, 27<sup>th</sup> and 28<sup>th</sup> June 2017; 18<sup>th</sup> and 19<sup>th</sup> July 2017. He received good feedback on the feedback forms from each of the individual days but there was no further

feedback to the claimant from the respondent, in particular from Ms Craig who attended the training sessions.

10.23 The help which had been promised by Mr Thomas and Mr Fereday in supporting the claimant's existing customer base whilst he undertook the Halfords' training programme, had not materialised; the claimant was attempting to support his customers' needs in addition to the Halfords' training and was still supporting other business demands on his time. The claimant was struggling to manage his workload at that time which was summarised at paragraph 3 of his witness statement:

*"my duties at this time included sales development for Elite Garages 16 depots, Watling Tyres and Universal Tyres 11 depots, ETB 27 depots, Malvern Group 47 depots, plus supporting my colleague with ETS, Tanvic and Dexal, training at local level ie. tyre depots. Added responsibilities included Halfords, Tyre Training Programme (attendance and delivery ) 460 sites, reviewing new products at Bridgestone training facilities in Rome and responsibility for delivering and updating key account Manager with product support, responsibility for Bridgestone external 'Road shows' working within a budget eg. Gloucester Motor show, [xxxx] Car show, supporting national and key account support for sell-out promotions, customers off side delivering 'Experience for yourself ' days within the new product programme for eg. Kwik fit, Cost-co National Tyres and Halfords."*

10.24 The claimant was losing confidence in his training ability as a result of the lack of feedback from his managers, and the issues he was encountering on the Halfords training days, particularly with the negativity of many of Halfords' staff. He was finding the travelling and staying away overnight a strain and did not want to continue with the training, especially not in Scotland. The claimant was not sleeping well and felt under great pressure because of the demands of the Halfords training. He was having difficulty focussing and concentrating. The claimant recognised himself as a 'workaholic' and having had a car crash fifteen years previously caused, he believed, because of the pressures of a heavy workload, he did not wish to repeat the experience. By June 2017 the claimant had not taken a holiday for 8 months. He took off a week in late June. On 22<sup>nd</sup> June 2017 he attended his doctor's surgery.

10.25 The doctor's letter describing the attendance of the claimant on 22<sup>nd</sup> June 2017 is dated 6<sup>th</sup> September 2017 and therefore has, no doubt, been taken from her contemporaneous notes. The letter, stated that at the time of the consultation with the claimant, the GP had been concerned that the claimant was very stressed; she was quite concerned about his reported lack of enjoyment in his usual activities. They discussed whether the claimant could self certify for seven days sickness absence and then return for another appointment with her if he needed a longer period of time off work. This letter was the only evidence of the claimant's medical situation physically and mentally.

10.26 The GP records in her report that the claimant did not feel able to self-certify for 7 days due to his work responsibilities. The claimant told the GP that he was having a job review in July and at that point he would have a frank conversation with his employer to try and reduce the number of roles in order to manage his stress levels. There was no mention in the GP's report of the claimant having a flare up of IBS or other gastro-intestinal issues.

10.27 The claimant met Mr Thomas and Mr Fereday on 30<sup>th</sup> June 2017. He told them about the adverse impact the Halfords Training was having on his relationship with existing sales development customers. He told them of the extreme time pressures he was under in trying to carry out the training alongside his other existing duties. He told them he had only agreed to take on the training role for Halfords on a temporary basis but he was now away overnight more than ever before and this was causing extreme pressure at home where he and his wife had also to deal with a terminally ill relative. The claimant told his line managers that he was overstressed, tired, was worried about making mistakes and was struggling to remember things,

he could not concentrate and was emotional and tearful. The claimant told them he had bumped his car when leaving a training session in circumstances which would not usually have caused an incident had he not been feeling under such stress.

10.28 This conversation was succinctly recorded in Mr Thomas email to the claimant of 3<sup>rd</sup> July 2017. Mr Thomas summarised the conversation as follows: -

- *“personal aspects –*
  - *Time pressures of doing the training alongside existing duties*
  - *Away overnight more now than before, adding pressure at home*
  - *Becoming stressed and tired from over work, travelling and lack of time off, concerned about making mistakes, bumping car etc. Doctor who has recommended time off and offered a note*
  - *Making commitments that others would not make and you mentioned that you feel that you are possibly being over relied upon as you have been helpful in the past*
- *Trade marketing customers*
  - *Insufficient time to dedicate to sales development*
  - *A feeling that you/the company are letting down the customers with whom you have trade marketing responsibility. This doesn't sit well with you as you strive to do a good job my impression is that you have a preference for this type of work*
- *Halfords*
  - *Expressed lack of confidence in the relationship delivering what we anticipate, due to skills/culture within Halfords*
  - *Believes that Halfords are disorganised which is reflected in the course locations and delegate number etc.*
  - *Course location/numbers of people attending changing regularly*
  - *Problems with meeting rooms*
  - *Insufficient delegates on some courses, too many on others*
  - *Unsure of the impact of the course in spite of the great feedback*
  - *Problem with Halfords training contract*
  - *preference not to train on the North, particularly Scotland for the above personal reason. (being away and travelling for an extended period)*

10.29 Mr Thomas recorded that the claimant was willing to carry out a proportion of the training alongside his current sales development responsibilities and would prefer not to carry out training which demanded extended stays away from home particularly in Scotland and where there is no certainty on the delegate attendance numbers.

10.30 Mr Thomas proposed that the claimant continued with the Halfords training courses already booked for 18<sup>th</sup>, 19<sup>th</sup> and 25<sup>th</sup> July 2017. On the claimant's return from a week's holiday in July, Mr Thomas suggested a meeting with Lorna Craig and another Bridgestone employee, David, who had been seconded to Halfords, to agree the schedule for the remaining Halfords divisions, training locations, delegate numbers and other training day arrangements.

10.31 Mr Thomas agreed to remove Scotland and the north of England from the claimant's training schedule. This in fact entailed the removal of one schedule training day.

10.32 Mr Thomas concluded his list of the steps he was proposing to take by asking two questions of the claimant. First, if the claimant felt that any of Mr Thomas's assessment of the situation was incorrect, that the claimant should let him know. Second, that claimant should let him know if he was happy to fulfil the training dates in July and whether the revised proposal is acceptable.

10.33 The claimant had expected Mr Thomas to take immediate steps to reduce the great

pressure that he felt and was disappointed that Mr Thomas had not.

10.34 On 5<sup>th</sup> July 2017 the claimant responded to Mr Thomas by email. He confirmed that he would deliver the planned Halfords courses on 18<sup>th</sup>, 19<sup>th</sup> and 25<sup>th</sup> July. He confirmed he would always try and play his part in supporting business needs and thanked Mr Thomas for his help and support. He asked for an opportunity to talk on a personal basis upon his return from holiday, on a one to one basis with Mr Thomas, as he had found it difficult to express his experiences and views within the catch up meeting.

10.35 The claimant also asked that his replacement company car should be a different (specified) marque which had the boot capacity for loading and carrying training equipment.

10.36 Mr Thomas responded on 18<sup>th</sup> July offering dates for further discussion with the claimant. He stated he was keen for the claimant to carry on working with customers providing sales development and training. He confirmed that he had asked Paul Turner (internal Bridgestone full time trainer) to step in and deliver the training in some of the Halfords' regions. He confirmed that Lorna Craig had a split of the regions to discuss with the claimant. He confirmed that Paul Turner would attend one of the claimant's Halfords' training events so that best practice could be shared and course content talked through.

10.37 When the claimant came back from holiday he carried out the two training sessions on 18<sup>th</sup> and 19<sup>th</sup> July in Bristol. The feed back was good. No adverse comment were received from Lorna Craig the account manager for Halfords who had been present.

10.38 Mr Thomas emailed the claimant again on 24<sup>th</sup> July. He confirmed that some days from Paul Turner had been secured to support the Halfords training in the north. He confirmed that Paul would attend the training session in Mansfield on 25<sup>th</sup> July to help him understand the material the claimant was using.

10.39 The last date on which the claimant trained Halfords staff was 25<sup>th</sup> July 2017 in Mansfield. The claimant had slept badly and was suffering from a flare up of his gastro-intestinal condition which he attributed to the stress of the situation.

10.40 Lorna Craig, instead of Halfords, had made the arrangements for this venue on 25<sup>th</sup> July in Mansfield. Because the issue of poor attendance numbers had been previously taken up with Halfords, an unusually large number of delegates attended - 21 on this occasion. The room comfortably accommodated 12 people with 16- 18 delegates as a maximum. The delegates were Halfords' sales managers. It was not clear whether some shop floor (tyre fitters) also attended. One regional sales manager attended for the first time.

10.41 It was a very hot and humid day; the room had no air conditioning; windows would not open more than a couple of inches; the temperature in the room was high all day, the catering was poor. The unsatisfactory conditions for a training session had been exacerbated by the number of people who had to squash into the room.

10.41 The claimant delivered the training. Paul Turner attended as an observer so that he could deliver the same training the following day. The claimant believed that many of the delegates were resentful about having to attend and one delegate actually told the claimant that he had been threatened into attending by Halfords' management. The claimant tried to keep the training session flowing, he included breakout groups, comfort breaks and a number of jokes including 'ice-breaker' sessions after each break; one ice-breaker sessions was a game in which the delegates had to identify the theme tunes of well-known TV programmes.

10.42 Feedback forms were completed by 20 out of the 21 attendees on 25<sup>th</sup> July. The only attendee who did not complete a form was the Regional Sales Manager, Mr Brosnahan.

Although the information on the forms was scant, nevertheless what was said on all the forms was largely positive, commenting that the objectives– to maximise tyre sales and knowledge - had been met. There were some negative comments about the training being rushed and the facilities of the venue. Generally the feedback could be summed up to say that the content and the delivery of the training was at least satisfactory - good.

10.43 The next morning on 26<sup>th</sup> July 2018 Paul Turner emailed Mr Thomas to give him feedback on the claimant's training session the day before. He referred to the difficulties caused by the room being too small for the number of delegates who had arrived to attend the training event. Mr Turner said that the large number of people had made working on group exercises difficult but added: *"from a trainers point of view, that I thought Steve did an excellent job of controlling the group and did his very best to ensure as many people contributed as much as possible. On this occasion there was a Halfords RSM in attendance (Paul) which may be indicative of the way forward."*

10.44 Mr Turner went on to say:

*"I thought the training delivered was aimed just right for the target audience of branch managers and flowed at a good speed that kept everyones attention..... I don't foresee any serious criticism of how the day went."*

10.45 Mr Turner commented that although he was not privy to the issues regarding him stepping in to assist with Halfords training for the rest of the year, he could say from what he saw on 25<sup>th</sup> July that there was **NO** [his emphasis] lack of passion and enthusiasm from [the claimant's ] part and that he, the claimant, did all he could to ensure the training went well.

10.46 Mr Turner then commented: *"obviously different trainers have different styles of delivery and different ways of working with an audience but there is nothing I would fundamentally change from what I saw yesterday. I will be in touch with Steve in order to get a copy of the course from him (maybe available on hard drive?) so that I can, over the next few weeks, add to it or make small amendments as required for my own way of presenting."*

10.47 Also on the morning of 26<sup>th</sup> July 2017 the claimant emailed Mr Fereday copied to Mr Thomas and Ms Craig. He gave his point of view having read Mr Turner's feedback. He described being informed by one delegate *"that many had been forced to attend and had been "threatened" this makes any trainers position very challenging and takes skill, guile and understanding to turn this negative into positive."* He added that *"This is not conducive to professional training and leadership, internal Halfords morale is providing a strong distraction of our objective to include tyres as part of HAC every day business cultures as regards selling profitable products."*

10.48 In the email the claimant also offered his apologies to Mr Thomas after their telephone conversation on Monday which I took to be 24<sup>th</sup> July the day before the training event in Mansfield. The claimant states: *"I am not sure of my current position within Bridgestone and would welcome some help & guidance It is clear that some resolution should be sort [sic] for both parties to move forward."*

10.49 There was no further elaboration during the Hearing on the content of this phone call although clearly the claimant is concerned about his position in the respondent company.

10.50 On 26<sup>th</sup> July 2017 an internal Halfords' email sent by Mr Turbfield to the Halfords HR manager, Mr Gurney, was forwarded by Mr Gurney to Lorna Craig. She in turn forwarded it to Mr Thomas. It was referred up to Mr Farrell Dolan who then confirmed to Mr Turbfield by email that the complaint in the Halfords' email was being dealt with internally as a matter of urgency.



10.51 The email from Halfords contained a complaint from Mr Brosnahan made on 25<sup>th</sup> July 2017 about the claimant's training course which he had attended. Ten facts were listed in the complaint, quoting some of the behaviour and language used by the claimant during the training:-

1. *If you want a laugh I can get my willy out and walk round but, you'll have to put your glasses on.*
2. *I'll see you in the toilets at dinner and give you a toy. This was referring to a Bridgestone toy car that Tom said he wanted one.*
3. *I like you but I wouldn't want to sleep with you.*
4. *Bridgestone are sponsoring the Olympics "fucking woopy doo"*
5. *When playing music to Baywatch Steve refers to watching the jugs running across the sand referring to Pamela Anderson*
6. *Please give feedback and if you think I'm a twat write twat*
7. *He turned to me and said "do you want to write some feedback" I said no to which he said "can't you spell twat"*
8. *He also said "it hurts me to say it but the Germans invented the technology"*
9. *He gave the middle finger shown to one manager*
10. *There's always a knob in the room, sometimes 2."*

10.52 The complaint from Mr Brosnahan went on to say he found the claimant's behaviour derogative [sic], unprofessional and not the behaviours that Halfords want to accept or demonstrate to their managers during training or at any point. He complained about the early finish at 3.30pm instead of at the scheduled time of 5pm; the claimant having flicked through the slides not covering enough of the selling skills to support selling tyres. There had been a full hour's lunch break, two 25 minute breaks which were not fully needed, and three "ice breakers" each of 15 minutes.

10.53 Mr Brosnahan stated:

*"my concerns that throughout the day there was connotations to sexual innuendo along with foul language and touching on racial side comments about German and Chinese people. Throughout the day we also had catering ladies walking in with tea's and lunch and I was terrified that Steve might make a comment whilst these ladies were in the room with 16 managers wearing the Halfords Brand uniforms. ...."*

*In the culture of change and trying to develop our managers into business managers/leaders I feel this is "not" setting the right example of behaviour in a training class room environment. I would be concerned that "if" Centre Managers think this is the way to speak to their teams and that during training "trainers/faciltiers" [sic] demonstrate these poor choice of words, language and behaviour CM might think its ok. Another concern would be that we have female manager that potentially would be trained on Bridgestone tyres by this trainer.*

*I am so glad that I went to the training before we do any more of these across the business as I believe Bridgestone and Halfords are not aligned on the products v's selling as well as using the right language when talking about customer service and satisfaction."*

10.54 Halfords forwarded to the respondent seven anonymous statements taken from the delegates who had attended the training delivered by the claimant on 25<sup>th</sup> July 2017. At least six of these anonymous statements had to have been written by delegates who had not made any adverse references to the claimant's training day on the feedback forms they had already completed at the end of the training session. The anonymous statements were therefore contradictory to the previous feedback that had been previously given in general terms.

10.55 The statements made comments about the training including (but avoiding where possible duplication):

- *The course content and delivery were not at the level I'd expect from a company with the prestige of Bridgestone. The instructor seemed rushed even though we finished 2 hours early and at times the banter being thrown around made me feel uncomfortable. An example of this was the instructor refusing to say a centre managers name correctly and even making a joke of the fact. .... the course content needs to be reviewed before it is delivered to any other Halfords colleagues.... We received no training to actually achieve the aim to improve our tyre sales.*
- *Heard on more than 1 occasion don't worry there's always 1 knob in the room*
- *If we need a bit of a laugh I'll walk round with my knob out*
- *A lot of occasions were very professional when training..... but this was overshadowed by the use of unsightly language and phrases more common in a backstreet garage than by a top training from a company like Bridgestone.*
- *The content wasn't what I expected – seemed to be an advertisement for B/Firestone..... thought there would have been more selling techniques involved and the whole thing seemed very rushed, lots of skipping slides*
- *Given the professional environment we was in .... [the trainer] was actually highly inappropriate. The main one....that springs to mind ....a manager joked with him about wanting another prize for getting a question to which the tutor's response was "meet me in the toilets after this session and I'll give you a toy to play with".*
- *On the whole the course was enjoyable and the tutor was quite funny and witty but sometimes was way over the mark and the content could be aimed at helping us improve sales techniques and test calls rather than product knowledge.*
- *The trainer used very poor language throughout the whole day*
- *The trainer also was very rude in the presentation referring to walking around with his penis out if we sell Bridgestone Tyles and hit plan.*
- *...as a result of these actions I felt that the day was disasters [sic] that taught me nothing about selling tyres and left me concerned about the trainer presenting this to others.*
- *Language and behaviour ...from the instructor during the training to be rude and unprofessional at best and made for an uncomfortable learning environment*
- *Comments were made to individual to try to "get them back in the room" but some were around age and sexuality. I suspect it was all meant to be in a jovial "banter" manner to engage a rook of managers from our industry. However it came across as aggressive and mocking and to me crossed a line, not what I would have expected from a training course involvement Bridgestone and Halfords Auto Centres in 2017.*
- *There were several instances of inappropriate (one way) banter with homosexual connotations, especially to a young colleague from region [x].*
- *[the course] was not tailored for presenting to a room of successful centre managers of a top brand multi discipline, I mean honestly, trying to tell us how the tyre label works, what I means is an insult especially when he did not tell us about the latest legislation etc. a centre manager had to point out the legal requirement to discuss the label values on initial inquiry (confirmed by Bridgestone rep in room)*
- *Limited analysis of the homework set (which had taken valuable time to do for most)*
- *New detail limited*
- *Told not to sell on the enquiry call..... (NOT Hac policy)*
- *Food limited and insufficient for a scheduled 12 hours day incl travel time from breakfast*
- *The course (if you can call it that) was not anywhere near worth the value of the drop in sales due to me not being in centre on a short staffed week.*
- *The course was very number orientated in the morning which I found quite boring, we were just reading slides, the afternoon sessions was much better when we went through the performance of different tyres.*
- *The instructor was very vulgar with some of his comments which surprised me as he was representing a major tyre company that Halfords are teamed up it was quite embarrassing."*

10.56 Having received the anonymous statements from Halfords, on Monday 31<sup>st</sup> July 2017 , Mr Thomas and the HR manager Ms Edden decided there was a case to answer for alleged gross misconduct and wrote to the claimant informing him that he was suspended with full pay with immediate effect pending the result of an investigation into his conduct on 25<sup>th</sup> July at the Halfords training session. The claimant was warned that the outcome of the investigation (strangely, rather than the disciplinary hearing) was summary dismissal.

10.57 On 4<sup>th</sup> August Mr Thomas and Ms Edden interviewed Paul Turner. Mr Turner was invited by Ms Edden whether he stood by his earlier feedback (by email on 26<sup>th</sup> July 2018) or whether he wanted to *elaborate more now that a formal complaint had arisen from Halfords*. Ms Edden invited Mr Turner not to talk about the claimant's style but maybe more some comments that had been made.

10.58 Mr Turner responded: *"OK, I cannot argue with the complaint that were comments that were made that I felt were very near to the knuckle. You have to know your audience. Tyre fitters can be rough and ready and you can talk to them in ways that you can't talk to others. I feel Steve miss judged [sic] this audience; tyre technicians may not have taken offence. Certain things should not have been said such as the comment about Bridgestone partnering with the Olympics whoopy fucking do and the comment about getting his willy out. This was playground behaviour and not appropriate. I would imagine our relationship with Halfords at the moment is not good."*

10.59 Mr Thomas responded: *"hopefully we will keep our partnership as long as we do the right thing and provide a good service."*

10.60 Mr Turner commented that a Halfords RSM was on the course so that is probably why a complaint came in. He said he had read feedback forms from the delegates on the day and no comments were on them about the claimant's behaviour.

10.61 Ms Edden then gave an explanation for that: which was that sometimes delegates just wanted to get out of training so they just tick all the boxes as happy or good just to do the exercise.

10.62 Mr Turner asked if everyone would be given statements about this. Ms Edden said yes where possible that they were trying to get statements from everyone in attendance as this is a serious allegation and we have to investigate it properly fairly. No further statements were taken from delegates.

10.63 Mr Turner commented that both he had and Steve had received training in the past on how to speak to delegates and your target audience. Mr Thomas asked Mr Turner about the last paragraph of his email of 26<sup>th</sup> July and where Mr Thomas believed Mr Turner was highlighting some concerns he had but wasn't being specific. This was a reference to Mr Turner's comment in his email of 26<sup>th</sup> July *"obviously different trainers have different styles of delivery and different ways of working with an audience but there is nothing I would fundamentally change from what I saw yesterday."*

10.64 Mr Turner accepted that words like 'willy' and meeting in the toilet' had been said and perhaps he should have said something to the claimant on the day but that excused himself by explaining that he had been only there to observe the training. Mr Turner in response to a question from Mr Thomas described the circumstances of the Baywatch comment occurring in the training. He explained that the claimant had, after a break, asked the delegates to name the tune as an icebreaker to get them back on course. One of the tunes was the Baywatch theme tune at which the claimant had made a comment about watching the lead actress's "jugs moving whilst running along the beach".

10.65 Mr Turner referred to most of the ten complaints that were listed in the original complaint email from Halfords including reference to there is always one knob in the room. Mr Turner also stated: *"there was also an Asian guy on the course and Steve kept getting his name wrong and I am not sure if he was doing it on purpose or if he did keep forgetting his name even though there were name cards in front of everyone. There was also derogative [sic] comments made about Germans.*

10.66 Mr Turner did not see any hand gestures by the claimant (no.9 of formal complaints).

10.67 Mr Turner also added that he did not feel the claimant had dealt properly with the situation where one delegate was on his phone during the course of the claimant's presentation due to him having an employee go off site which he had to deal with and eventually left the room. He felt the claimant could have made it easier rather than making a big issue out of it.

10.68 Later in the morning on 4<sup>th</sup> August Mr Thomas and Ms Edden interviewed the claimant. Mr Thomas and Miss Edden ran through the list of ten complaints raised by Halfords. The claimant denied saying some of the allegations. Some he could not remember whether he had said them; some he admitted. The reference to the Germans inventing the technology was just a comment on how good they are on what they do – the same information he had been given when attending a Bridgestone training session in Rome.

10.69 The claimant said that his style does not change in training – he talked the language of the delegates and did not think different on this course to all his other courses. He said that Lorna Craig and the Halfords manager had been on previous courses and they had never commented about his behaviour. The claimant said *"I can see how bad this looks but I can't rewrite the book in hindsight I would not have made some of them comments. I can offer my apologies and yes please I do."*

10.70 The claimant accepted that he made the 'twat' comment but not that he had ever referred to his willy. The claimant acknowledged that some of the language he had used was not acceptable and he would be happy to have more training. He also put forward mitigating circumstances regarding his health issues and that although he had been invited to self certify for 7 days by his GP, he had not; he had decided to plod on anyway under extreme pressure physically and mentally which Mr Thomas knew about. He said he was struggling on that day and didn't want to let down Mr Thomas or Bridgestone. He explained that his recent workload and stress had brought on the symptoms of Crohn's Disease.

10.71 The claimant said that he did not want to lose his job. He would take some training. He said *"Tell Halfords I am sorry and you will not send me there again."*

10.72 Ms Edden pointed out that it was not just about Halfords but also that the claimant was 'derogative' [sic] about Bridgestone, when the claimant was supposed to be presenting Bridgestone as a professional trainer.

10.73 August 2017 until 14<sup>th</sup> August 2017. Further sicknotes signed the claimant off work with acute reaction to stress and he did not return to work for the respondent.

10.74 The claimant was notified by letter dated 8<sup>th</sup> August 2017 that he was required to attend a disciplinary hearing on Tuesday 15<sup>th</sup> August 2017. The allegations were "inappropriate behaviour and language used on an external training course" which in the respondent's view constituted gross misconduct. Ms Edden enclosed with the invitation the original complaint email and the anonymous witness statements.

10.75 The claimant was informed that Mr John Sage would chair the disciplinary hearing and the other normal formalities of an invitation to a disciplinary hearing were dealt with in the

invitation letter. The claimant was informed that the outcome of the disciplinary hearing could result in his summary dismissal in accordance with the Company's disciplinary procedure.

10.76 On 12<sup>th</sup> August 2017 the claimant sent a letter of resignation due to the workload and stress which despite having repeatedly brought to the attention of the company, had had a major detrimental impact on his health and wellbeing. He stated that he will assume his letter of resignation is satisfactory unless otherwise noted. The claimant stated it seemed clear that Bridgestone was *"not prepared to accept mitigating circumstance, so my position has become untenable."*

10.77 The disciplinary hearing was delayed because of the claimant's ill health. The claimant sent his GP's letter of 6<sup>th</sup> September 2017 (referred to above) to the respondent. Ms Edden attempted on two occasions to arrange the disciplinary hearing. It was eventually arranged for 20<sup>th</sup> September 2017. The claimant was given alternatives to his personal attendance, for example, that he could participate by telephone conference call, submit a written statement, send a representative to act on his behalf.

10.78 The hearing eventually took place on 27<sup>th</sup> September. The claimant's wife and his son, Peter, attended to represent the claimant who was too ill to be present.

10.79 At the commencement of the hearing Mr Sage outlined the options open to him including a first stage to final warning, suspension or summary dismissal. He confirmed that in issue was the complaint from Halfords not about the content of the training, but the claimant's conduct and behaviour. Mrs Booth and Peter Booth put the claimant's case fully and succinctly. The main points are summarised thus:

- Some of the comments in the Halfords complaint, but not all, were accepted by the claimant and some were not;
- The claimant had been under huge pressure in the months leading up to 25<sup>th</sup> July – too much work, uncertainty about his job, lack of support from his managers and no consideration of his welfare;
- He had an unblemished record;
- The event of 25<sup>th</sup> July 2017 was an isolated incident;
- There had been red flags evidence to Mr Thomas and Mr Fereday which had been ignored;
- The claimant had been threatened by Mr Thomas's comment that the matter would be referred up to Mr Dolan if the claimant refused to do the training;
- The claimant believed he was not properly trained as a trainer;
- He had significant personal pressures (ill health of family member) at the time;
- Despite being told he would be supported in his existing work load nothing was done to ease the pressure despite expressing his concerns to Mr Thomas;
- He was stressed, fatigued and had had a car accident 2 days before the training as a result;
- He was on medication
- The claimant believed he was not competent to do the training and needed further training;
- The claimant did not know that the Halfords training was not a permanent situation; he had waited 7 months without receiving any clarity on his role;
- The poor facilities and working conditions in the training room on 25<sup>th</sup> July 2018;
- The training was overcrowded;
- He had felt under pressure on the day and had 'turned up' his style from 9 to 11 to engage people;
- Paul Turner's statement had contradicted his first email;
- The respondent was aware of the claimant suffering from Crohns Disease;
- The claimant does not want to leave the company; he would accept a written warning

which he did not consider would be unreasonable; and he would like some training to help this development and to avoid this happening again; the claimant would like his original [sales development] role back;

- Normally the claimant would not say those things and he is so upset, he feels dreadful and embarrassed;

10.80 Mr Sage reserved his decision and sent the outcome in a letter on 10<sup>th</sup> October 2017 in which he confirmed summary dismissal with reasons.

10.81 The reasons in Mr Sage's letter can be summarised as follows;

- The claimant had admitted the bulk of the statements made by the witnesses about the things said by the claimant in the training session was true;
- General health, stress and the physical conditions on the day had been put forward in mitigation;
- 8 years unblemished service was submitted as mitigation but that did not explain or condone the claimant's behaviour;
- The investigation undertaken by Ms Edden and Mr Thomas and been full and fair, carried out with sufficient rigour and balance.

10.82 For those reasons Mr Sage concluded that there was no alternative to summary dismissal on the ground of gross misconduct as the gravity of the misconduct was such that the company believed trust and confidence in the claimant had been completely undermined. That misconduct had been repeated, inappropriate comments of a personal, offensive or sexual nature at a training event to representatives of a key Bridgestone customer.

10.83 The claimant was informed of his right of appeal.

10.84 He appealed on 17<sup>th</sup> October 2017 on the principal basis that the disciplinary sanction of dismissal was disproportionate and unduly severe. The points of appeal were set out in a letter. The appeal was conducted on the papers by Mr Stuart Jackson, Business Development Director.

10.85 Mr Jackson considered the grounds of appeal and the collated documents during the disciplinary process.

10.86 Mr Jackson considered that the comments that had been reported by Halfords on 25<sup>th</sup> July 2017 warranted the decision to invoke the disciplinary procedure. He considered that the respondent had been flexible in the arrangements for the disciplinary process and commented that the claimant chose not to attend the disciplinary hearing in person or be represented contradicted by Mr Jackson then commenting that there had been no denial of the claimant's actions by his representatives.

10.87 Mr Jackson confirmed that as part of the appeal process he had had discussion with the claimant's line managers with whom the claimant had had several consultations on the Halfords training project prior to and in preparation for the launch of the initiative. Mr Jackson commented that the claimant had made his feelings known openly and assertively, the most specific being the claimant's disapproval of being asked to take responsibility for the Halfords training programme. Mr Jackson noted that the claimant had already made reference to taking eventual court action against the respondent and he stated that this suggested that the claimant's demeanour which had provoked the complaints (on 25<sup>th</sup> July 2017), had been pre-meditated.

10.88 Mr Jackson stated that the need for political and personal correctness and ethical practice was high, given the respondent's exposure through both business and personal environments. He commented that the respondent had made it clear on both policy and expectations of all employees to be aware and act accordingly. The employee manual had been

issued to all employees and was available at all times for reference in the case of uncertainty and that HR was also available to offer guidance and support. Mr Jackson concluded that given the claimant's experience and maturity with the company and his representative role, it would be reason to expect that he recognised acceptable behaviour. The decision taken by Mr Sage was upheld.

10.89 Mr Turner took over responsibility for delivering and completing the Halfords' training programme in 2017.

### Submissions

11. I received written submissions from both parties for which I am grateful and I heard oral submissions. I have a full note of the oral submissions retained on the tribunal file. I have re-read all the submissions prior to and during my findings of fact, deliberations and conclusions.

### Law

12. As previously indicated, the law in this case is to be found in sections 98(1), (2) and (4) of the Act, which state:

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show —

(a) the reason (or, if more than one, the principal reason) for the dismissal; and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it —

(b) relates to the conduct of the employee...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case”

13. The tribunal is given judicial guidance in the cases previously mentioned as to how to apply the statutory provisions. I do not repeat them again. I also looked considered the ACAS Code of Practice on disciplinary and grievance procedures when coming to my decision.

### Conclusions

14. First, I consider whether Mr Sage had a genuine belief that the claimant had made inappropriate, offensive comments of a personal, offensive or sexual nature at the training event on 25<sup>th</sup> July 2017.

15. I have no doubt that Mr Sage did so believe - the claimant's representatives on the day

had broadly accepted that some of the comments were made. Mr Sage did not undergo an exercise to identify which comments were accepted as having been made and which were denied or whether some particularly the allegations of racism, were more serious than others. The claimant's representative appeared reluctant to do so and were content to say that generally the allegations of inappropriate comments were admitted.

16. Second, was Mr Sage's belief in the facts of the comments in particular of a sexual nature based on reasonable grounds? Yes I conclude that he had reasonable grounds. Most of the Halfords' anonymous statements referred to the sexual innuendos and some repeated the words such as 'willy' and 'knob'. The statements were anonymous. The claimant did not raise an objection to this reliance on anonymous statements at the time. There was no indication from the wording or the content that there had been collusion between the statement makers. Their comments were at times repetitive of each other as they were speaking of the same event, but expressed in different language with different emphasis.

17. In short, comments of a sexual nature had been made by the claimant on 25<sup>th</sup> July 2017 and had caused an unpleasant environment for some of the delegates at the training event and effectively amounted to sexual harassment under S26 Equality Act 2010 although the complaints were not described in that way. Mr Sage was entitled to find on the balance of probabilities that the claimant had made comments of a sexual nature even though the claimant denied saying some of them.

18. Third was this based on a reasonable investigation? Overall the procedure followed by the respondent ostensibly conformed to what would be considered a fair procedure – an investigation, the opportunity to be represented, to present one's case, and a decision with the right of appeal.

19. There are issues however arising with the sufficiency of the investigation and Mr Sage's decision to dismiss.

20. The ACAS Code of Practice on Disciplinary and Grievance Procedures advises that the investigation process should be conducted in a fair and reasonable manner and that in investigating a potentially disciplinary it is important to keep an open mind and to look for evidence which supports the employee's case as well as evidence against.

21. The investigation went no further than the six or seven anonymous statements and the statement from Mr Turner and of course of the claimant. No explanation was given for why the statements needed to be anonymous but in any event the claimant did not object.

22. Mr Turner had made a remarkable volte face in his evidence from the email of 26<sup>th</sup> August to the investigation interview of 4<sup>th</sup> August. It is detectable from the transcript of the investigation interview that Mr Turner was being manipulated by Ms Edden and also by Mr Thomas to obtain the evidence, it seems, that they hoped to receive – I refer to the facts at paragraphs 10.57, and 10.61 - 64 above indicate that the interviewers did not have a neutral or impartial agenda. Mr Sage's stated confidence that Ms Edden as a professional HR manager and Mr Thomas had conducted the interview with rigour and impartiality was misplaced.

23. However, Mr Sage must have had some concerns about the change in Mr Turner's evidence because he interviewed Mr Turner himself. There are no notes of this interview, when it took place, what was the content of the conversation, why Mr Sage had engaged in a discussion with Mr Turner and why Mr Sage believed that Mr Turner's evidence to Mr Thomas and Ms Edden in the light of him being manipulated by Ms Edden, was truthful and unbiased. Mr Sage said that it was a discussion which had lasted only a couple of minutes with Mr Turner - that itself is an issue given the importance of Mr Turner's "pivotal" evidence to Mr Sage's ultimate decision. Mr Sage committed a procedural error and it is unfair conduct of the proceedings not



to provide the claimant with evidence that was pivotal to the decision to dismiss.

24. Another procedural issue is the choice of investigating officer. It must have become evident to Mr Sage that Mr Thomas and Mr Fereday were in effect witnesses to the claimant's claims that he was unwell, suffering from stress, had not been supported by his line manager and claimed consequently that he was suffering from the effects of over work in looking after his own customers and the Halfords training contract. Principally his line managers had failed to reduce his work load and lighten the pressure from delivering the Halfords training contract which he had been asking for. Mr Thomas and Mr Fereday were also effectively the reason for the claimant's complaints amounting to a grievance. In the circumstances it was obvious that there was little immediate, if any benefit, for the claimant from Mr Thomas's two steps to ameliorate the situation for the claimant; he had requested Mr Turner to undertake one training in session in Scotland and Ms Lorna Craig to undertake the venue booking and catering arrangements which arrangements the claimant had nothing to do with.

25. Another issue arising from the evidence is that Mr Sage had discussions with Mr Thomas outside the disciplinary hearing. Mr Thomas and Mr Sage said that their discussions were no more than following up on where the disciplinary process was. I do not believe either of them. Mr Sage held a belief that the claimant was an experienced and competent trainer which impression he must have obtained from Mr Thomas. He was also aware of the "vitriolic phone call" between Mr Thomas and the claimant which he confirmed he had heard about from Mr Thomas during the course of the disciplinary process.

26. Finally the procedural aspects of the claimant's disciplinary hearing, Mr Sage did not follow up on the claimant's medication although he asked if the claimant was on medication.

27. The above points are all issues, but they are of less and insufficient weight in the evaluation of whether Mr Sage's decision was fair because the claimant did not forward any medical evidence to justify why his medical (health) situation caused him to make lewd jokes and sexual references at the training event. There was no basis to find that the stress the claimant was under both physically and mentally caused him to make lewd sexual references and inappropriate comments at the training event. It is easy to understand how his health issues might have caused him to rush through slides and cut the training event short, but not to cause him to use inappropriate language. I therefore find that overall on this point, Mr Sage's decision was one that was open to him based alone on the sexual references.

28. Whilst the investigation process was flawed and, to an extent some of the disciplinary process, this is not the reason that I find ultimately that the claimant was unfairly dismissed when considering the band of reasonable responses test.

29. It is a fact that the claimant's conduct on 25<sup>th</sup> July 2017 caused the respondent enormous embarrassment which they were very keen to rectify it and to preserve the supplier/customer relationship with Halfords. Mr Thomas had responded to Mr Turner saying: "*I would imagine our relationship with Halfords at the moment is not good*" by replying: "*hopefully we will keep our partnership as long as we do the right thing and provide a good service.*"

30. Was the claimant's conduct and the respondent's resulting embarrassment sufficient to justify summary dismissal? In essence, did Mr Sage's decision to dismiss fall within the range of reasonable responses? I find that it did not because of the following:

31. Mr Sage is, on his own evidence, a very experienced and senior HR manager. It is a serious omission that he failed to inquire and establish what training the claimant had received in equality and diversity such that Mr Sage could be confident that the claimant understood and knew what was acceptable and appropriate in delivering training on behalf of Bridgestone whether in-house or to clients. He did not establish that the claimant had the tools to deliver

training appropriately and professionally, no matter what provocations he experienced. He was on notice that the claimant had asked for additional training.

32. Mr Sage completely overlooked this fundamental point. He was of the view that the claimant was sufficiently senior and was sufficiently familiar with the cultural ethos of the respondent to have known that the comments he made on 25<sup>th</sup> July were unacceptable and highly embarrassing to the respondent. Clearly that was not the case. It is apparent from the claimant's oral testimony at the Hearing when he said that he would not have made the comments that he did if female delegates had been in attendance, that the claimant had not known that sexually inappropriate comments were not acceptable at the training event whether before a mixed audience, or an all male audience.

33. The claimant had been delivering training informally and more formally for Halfords on several occasions without the respondent, and in particular without Mr Thomas and Mr Fereday, having any idea how the claimant delivered the training despite his pleas that he was not a professional trainer and that he felt insufficiently trained to deliver the Halfords training. His requests were ignored.

34. Mr Sage's decision letter is short on reasons for the conclusions reached. Mr Sage elaborated on the reasons for dismissal in his witness statement and in cross examination.

35. Mr Sage said in the dismissal letter and in cross examination that he had taken into account the claimant's exemplary 8 years' service which "*does not either explain or condone [the claimant's] behaviour in this instance.*" Mr Sage was entitled to reach this view – 8 years' exemplary service does not exonerate the claimant's conduct at the training event and in any event, it is entirely possible that the claimant was delivering training of a similar unacceptable style and content previous to the index event although that was ever established.

36. Mr Sage also referred in his witness statement to having considered a final written warning as an alternative to dismissal. At paragraph 19 of his witness statement Mr Sage said that the "*seriousness of [the claimant's] misconduct and his comments to accept his conduct was unacceptable and did not support a final written warning. I was not confident that he would change and therefore there was a serious risk of a similar episode with result damage to our brand*".

37. This was a finding which was not fully supported by the evidence before Mr Sage. At the investigation meeting the claimant offered his apologies. The claimant acknowledged that he should not have made some of the comments and said (not for the first time) that he would be happy to have more training - something I have already recorded as fact that the claimant had frequently requested from Mr Thomas and Mr Fereday and which is also recorded in the documentation provided for and during the disciplinary hearing.

37. The claimant is recorded in the investigation meeting as saying that with hindsight he would not have made the comments he made; he said he would do it differently next time; he offered his apologies; he said that he did not want to lose his job and that he would take more training; that he would apologise to Halfords and they could be informed that he would not be sent to train there again. Importantly he said he was not a trainer – he had "*ended up with it*" – all the training he had had was one course in 5 years which did not include equality and diversity training.

38. Looking at the transcript of the disciplinary meeting, in the claimant's written and oral submissions at the disciplinary hearing, it was made clear that he did not want to lose his job with the respondent; that he loves working for the respondent; that he would accept a written warning as reasonable; would like some training to help his development and for this not to happen again [my emphasis]. He said he would like his original role (sales development) back.

39. The respondent placed a negative interpretation on the claimant's apologies and said that he had not displayed genuine contrition sufficient to give a reasonable employer comfort that the behaviour would not be repeated. No examples were given as to how the claimant should have made his apologies more convincing.

40. The documentary evidence does not support Mr Sage's opinion that there was a serious risk of a similar episode occurring at a training event. Furthermore the respondent is fixed with a significant degree of responsibility because it had taken no steps whatsoever prior to this unfortunate event on 25<sup>th</sup> July to ensure that such a breach of good practice does not happen. Additionally, despite Mr Sage not establishing the equality/diversity training situation, he also ignored the claimant's protests that he felt he was insufficiently trained to undertake the Halford's training programme. Mr Sage commented twice in the disciplinary hearing, contradicting the claimant's representatives, that the claimant had delivered training before and "done well by all accounts". Had the claimant been given equality/diversity training and had nevertheless conducted the training event as he did on 25<sup>th</sup> July, Mr Sage's opinion on serious future risk of a similar episode would be better justified and potentially well-founded.

41. Finally there was no evidence that Mr Sage had taken into account in rejecting a lesser sanction than dismissal, that the claimant was not professional trainer; he was only temporarily allocated to training and that the Halford's training was not a permanent position. The claimant had had no previous involvement with Halfords in the course of his employment. Lorna Craig was the Halfords account manager.

42. The claimant was not a permanent trainer like Paul Turner. Mr Sage did not consider whether the claimant could be removed from the Halfords' training programme and returned to his sales development role and existing customer base where he had been successful and had provided good service. There could have been a condition imposed that the claimant undergo equality /diversity training before undertaking any more training and that he should not have any involvement with Halfords training or otherwise with Halfords. Removing the claimant from the Halfords' training programme and from all contact with Halfords was a potentially reasonable measure that was available to Mr Sage and would have been a reasonable approach to take given the claimant's years of service and good disciplinary evidence and the failure of the respondent to provide any equality and diversity training.

43. These facts – that the claimant had not received equality / diversity training, that there was no serious threat of the claimant repeating his conduct and the failure to consider a reasonable alternative to dismissal by removing him from contact with Halfords and providing a final written warning, all of which should have been obvious to a senior and experienced HR manager like Mr Sage, places the decision to dismiss firmly outside the band of reasonable responses.

44. The evidence indicates that Mr Sage did not address his mind to them at all which leads to the strong likelihood that the claimant's summary dismissal was viewed as the only acceptable course of action to salve the respondent's undoubted embarrassment, appease Halfords and thus preserve their relationship.

45. Mr Sage's decision to dismiss did not fall within the band of reasonable open to a reasonable employer rendering the dismissal unfair.

46. I then turn to the appeal process to examine whether it 'cured' the failings in the disciplinary process. Mr Jackson reviewed the evidence before the disciplinary hearing. He felt the evidence on which Mr Sage's decision was based was incontestable. As part of the appeal process Mr Jackson also made further inquiries himself of the claimant's line managers from which he learned that there had been several consultations on the subject of the Halfords project

between the claimant and his line managers. None of this evidence was revealed to the claimant in order that the claimant could respond to new evidence before Mr Jackson reached his decision on the appeal.

47. Mr Jackson stated in the appeal outcome letter (which was undated) that the claimant had openly and assertively made his feelings known, specifically that he disapproved of being asked to take responsibility for the Halfords training programme. Mr Jackson was of the opinion that as the claimant had made reference to taking eventual court action against the company it suggested that his demeanour which provoked the complaints was pre-meditated.

48. Mr Jackson also referred to respondent's policy on ethics and behaviour being clear and documented and all employees were expected to comply. The so called "well documented policy on ethics" were not included or referred to in the disciplinary process at all. Mr Jackson said that the staff handbook was issued to all employee and available at all times for reference. Again, no reference was made to any meaningful equality/diversity policy in the staff handbook and that which existed would have given the claimant little if any guidance on appropriate conduct.

49. I conclude that the appeal process comprehensively failed to cure the failings of the disciplinary process.

50. For completeness I refer to the claimant's resignation letter. It was undated. Mr Sage ignored it. The claimant did not rely on it. The submissions that the claimant did not want to leave the respondent's employment post date the resignation letter. The resignation letter takes the matter no further and has no relevance to the issue of unfair dismissal.

51. In summary, for the reasons stated above, the dismissal was unfair. I then turn to the question of Polkey and contributory fault. The decision to dismiss was unfair under the band of reasonable responses test and I do not apply Polkey.

52. However I have considered contributory conduct under S122(2) and S123(6) Employment Rights Act 1996. S123(6) states: **Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.**

53. The claimant's conduct prior to and during the course of the training was such that a find a 50% reduction in the basic and compensatory award is just and equitable based on the culpability of both the employee and the employer. The claimant had a duty to take care of his own health and safety which, on his own evidence he did not. He failed to take time off work when GP suggested that he could do so. The claimant overrode her advice. He failed to escalate a grievance about Mr Thomas and Mr Fereday not supporting him and more importantly not listening to him. He admitted in hindsight as going too far in his comments in the training event on 25<sup>th</sup> July, and that he would not have made the comments had female delegates been present. On the part of the respondent, it had totally failed to provide any equality /diversity training and any monitoring/or assessments of its training standards, punishing a first occasion offence with dismissal despite its omissions.

The matter will be listed for a remedy hearing.

Employment Judge Coaster  
Signed on 15<sup>th</sup> October 2018

