THE EMPLOYMENT TRIBUNALS

Claimant: **Mr S Beattie**

Respondent: **Limec Logistics**

Heard at: **Newcastle Hearing Centre** **On:** **Friday 13th November 2020**
By: **Cloud Video Platform (CVP)**

Before: **Employment Judge Martin**

Representation:

Claimant: **In Person**
Respondent: **Mr M Brien (Counsel)**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was CVP (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

1. The claimant's complaint of unlawful deduction from wages is well-founded. The respondent is ordered to pay the claimant the sum of £452.42.

2. The claimant's complaint of breach of contract (notice pay) is well-founded. The respondent is ordered to pay the claimant the sum of £904.84.

3. The claimant's complaint of unfair dismissal is also well-founded. The claimant is awarded the sum of £1,027.55.

4. The claimant's complaint of failure to provide a written statement of particulars of employment is not well-founded and is hereby dismissed.

REASONS

Introduction

1. Mr William Graham the managing director of the respondent company and his daughter Emma Graham gave evidence on behalf of the respondent. The

claimant, his son Lee Beattie, and Mr David Barker, the latter both employees of the respondent, gave evidence on behalf of the claimant. Mr Rodney Glen a former employee and colleague of the claimant also submitted a witness statement on behalf of the claimant but did not attend the tribunal to give evidence. Little weight was attached to his statement. The tribunal were provided with an agreed bundle of documents marked Appendix 1.

<u>The law</u>

2. The tribunal considered the following law:-

3. Section 98 (1) of the Employment Rights Act 1996 "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 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."

4. Section 98 (2) ERA 1996 "a reason falls within this subsection if it (b) relates to the conduct of the employee".

5. Section 98 (4) ERA 1996 "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."

6. The case of British Home Stores v Burchell 1978 IRLR378 where the EAT held that in cases of misconduct, there are three elements: - first there must be established by the employer the fact of the belief in the misconduct; secondly it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief and thirdly that the employer had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

7. The case of Iceland Frozen Foods Limited v Jones 1982 1982 IRLR439 where the EAT held that the function of the employment tribunal is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair.

8. In the case of Polkey v AE Dayton Services Limited 1987 IRLR503 the House of Lords held that an employer faced with grounds to dismiss will in the great majority of cases not act reasonably in treating the reason as a sufficient reason for dismissal unless and until he has taken the procedural steps which are necessary in the circumstances of the case to justify that course of action unless the employer can show that would have been utterly futile and useless.

   In considering whether an employee would still have been dismissed even if a fair procedure had been followed the House of Lords held that there is no need for an all or nothing decision. If the tribunal thinks there is a doubt whether or not the employee would have been dismissed that element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment.

9. Section 122 (2) Employment Rights Act 1996 "where the tribunal considers any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, the tribunal shall reduce the amount accordingly."

10. Section 123 (1) ERA 1996 "the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer."

    Section 123 (4) "in ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales."

    Section 123 (6) "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."

11. The case of Nelson v BBC (2) 1979 IRLR 346 where the Court of Appeal held that, in determining whether to reduce an employee's compensation for unfair dismissal on grounds of contributory fault, the tribunal should consider whether there is culpable or blameworthy conduct and secondly whether that conduct contributed to some extent to the dismissal and if it is just and equitable to reduce the amount of compensation accordingly.

12. The case of Hollier v Plysu Limited 1983 IRLR 260 where the Court of Appeal held that in considering where the compensation should be reduced on the grounds of contribution, the tribunal's function is to take a broad common sense view of the situation to decide what part, if any, the employee's own conduct played in causing or contributing to the dismissal and then decide what, if any, reduction should be made to the claimant's compensation.

13. The case of Gardiner-Hill v Roland Burger Technics Limited 1982 IRLR 498 where the EAT held that the tribunal has to consider in a case where there is a

failure to mitigate when on the balance of probabilities the employee would have gained alternative employment at a similar level.

14. Article 3 of the Employment Tribunals Extension of Jurisdiction Order 1994 "proceedings may be brought to an employment tribunal in respect of a claim of an employee for the recovery of damages, which arise, or are outstanding on the termination of the employee's employment."

15. Section 1 of the Employment Rights Act 1996 provides that an employee shall be provided with a written statement of particulars of employment which incorporates various particulars, inter alia, including details of working hours, pay, and notice periods on termination, holiday and sick pay entitlement.

    Section 4 of the ERA 1996 provides that, if there is a change in the statement of particulars of employment, details of those changes should be given to the employee.

16. Section 13 (3) ERA 1996 "where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker on that occasion, the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker's wages on that occasion.

17. The ACAS Code of Practice 2019 which sets out the procedure to be followed in relation to disciplinary matters. It refers to investigating any disciplinary matters; notifying the employee of the nature of the complaint; giving the employee an opportunity to respond to the complaint and arranging a disciplinary meeting and appeal hearing.

18. Section 207A Trade Union and Labour Relations (Consolidation) Act 1992 provides at paragraph 2 that if it appears to the employment tribunal that, in a claim to which the ACAS code relates and the employer has failed to comply with the code of practice, the employment tribunal may, if it considers it just and equitable in all the circumstances, increase the award it makes to the employee by no more than 25%. At paragraph 3 of that section it further states that, where it appears to the employment tribunal, the employee has failed to comply with the ACAS code of practice then the employment tribunal may, if it considers it just and equitable in all the circumstances, reduce any award it makes to the employee by no more than 25%.

<u>The issues</u>

19. In relation to the complaint of unfair dismissal the tribunal had to consider the reason for dismissal. The respondent asserted that it was for a reason related to the claimant's conduct. In that regard, the tribunal had to consider whether the respondent had a reasonable belief that the claimant had committed an act of misconduct; whether that was based on reasonable grounds and whether the respondent had carried out a reasonable investigation. The respondent also asserted that the dismissal might have alternatively been for some other

substantial reason namely a loss of trust and confidence in the claimant, although they did not pursue this argument during the course of the proceedings.

20. The tribunal had to go on to consider whether the respondent followed a fair procedure and/or whether it would have been futile to do so. It also had to consider whether the decision to dismiss was within the band of reasonable responses open to a reasonable employer, in particular the claimant argued that he was treated differently to other employees for similar and more serious offences.

21. In relation to any remedy the tribunal had to consider the claimant's loss, the period of any loss and whether the claimant had acted reasonably in mitigating his loss. The tribunal also had to consider whether the claimant contributed in any way to his dismissal and whether he would have been fairly dismissed in any event and, if so, the chance of that happening. The tribunal had to go on to consider whether any award for compensation should be increased or reduced in respect of any failure by either the respondent or the claimant to follow the ACAS code of practice.

22. In relation to the complaint of wrongful dismissal the tribunal had to consider whether the claimant was in breach of contract, namely whether the respondent was entitled to dismiss the claimant summarily without any notice.

23. In relation to the complaint of deduction from wages, the tribunal had to consider whether the claimant was entitled to one week's lying-on wages.

24. The tribunal also had to consider whether there had been a failure to provide a written statement of particulars of employment to the claimant.

<u>Findings of fact</u>

25. The respondent company is a haulage company based in Middlesbrough. There is a managing director and a number of office-based staff. The rest of the employees are drivers. The company employs approximately fifteen employees.

26. The claimant was employed as an HGV driver from May 2017. It seems that the relationship between the claimant and the managing director was a good relationship until the time of his termination.

27. The claimant was issued with a temporary driver's agreement in May 2017, page 53 – 54 of the bundle.

28. In August 2019 a detailed statement of terms and conditions of employment was issued to the claimant. The document is at pages 55 – 108 of the bundle. It sets out details of the claimant's rate of pay, hours of work, holidays, sickness, notice periods and benefits. It also includes a number of appendices which include disciplinary and grievance procedures. The claimant says that that document was issued as a consultation document. He says that he signed it as having been issued as a consultation issue as is noted at page 109 of the bundle. The claimant says that there was an outstanding issue about overtime rates of pay in

relation to anything worked over twelve hours. He was unclear of what other issues were being consulted about. The claimant says that the consultation did not really go ahead and that there were no formal meetings about the document. No further documents were issued to the claimant.

29. The disciplinary procedure is set out in that document is at pages 96 – 101 of the bundle. The disciplinary procedure provides that there will be an investigation into the facts surrounding any potential disciplinary action but the person investigating will not be the person taking any disciplinary action. It goes on to state that the employee will be notified in writing of the basis and detail of any allegation; provided with any supporting documentation; and then invited to a meeting to discuss the allegation with the opportunity to have a representative present. It states that the meeting will enable the employee to state their case and that the decision will thereafter be confirmed in writing and the employee will be notified of their right of appeal (pages 96-97).

30. The disciplinary procedure then goes on to identify various acts of unsatisfactory performance and misconduct. The former includes a failure to comply with reasonable instructions/lawful orders (page 97). The procedure also provides examples of gross misconduct which is at pages 98 – 99 of the bundle. It includes “fighting, threatening behaviour, or use of physical violence of any nature at any time during the employee’s working hours…. or in any circumstances where the reputation of the company may be adversely affected”; “persistent disobedience, without cause, of reasonable lawful instructions given by the company”; “ wilful refusal to carry out a reasonable and lawful instruction given by your employer or supervisor;” “behaviour which could be regarded as discriminatory which could be deemed harassment, victimisation or bullying”; and “provocative use of insulting or abusive language.”

31. The appeal procedure is set out at Appendix 15 on page 101 provides a timescale for the employee to appeal which is to be within five working days of the disciplinary action complained of and it also provides for an appeal hearing.

32. The respondent haulage company employs a number of drivers and there have been a number of incidents which were raised during the course of these employment tribunal proceedings.

33. An incident occurred concerning the claimant’s son in October 2019. He said that the other employee involved had been harassing, shouting and swearing at him and a fight broke out. He says that he was suspended and given a verbal warning. Mr Graham said in evidence that Mr Beattie junior had hit the other employee. He said that he could have dismissed him, but decided not to as Mr Beattie had a family and it was Christmas time and he needed drivers. He said that the other employee was also given a warning, although the claimant and Mr Beattie suggested that the other employee was not given a warning.

34. A further incident concerned Mr Glen, who not attend to give evidence at the Hearing. Mr Graham said that Mr Glen was regularly shouting and swearing abuse at other employees, customers and objects generally, but he then did not turn up for work. Mr Graham said that he then dismissed Mr Glen for that

behaviour and because he did not show up for work. He said he wrote to Mr Glen to dismiss him for not turning up because he could not continue to have drivers not attending work.

35. There was also an incident concerning Mr Barker in December 2019. He said that he was asked by Mr Graham to go and do a job late on an afternoon which he said he politely declined. It was accepted by both Mr Barker and Mr Graham that there was no swearing or bad language involved and that Mr Barker did indeed politely refuse to do the job. Both parties agree that Mr Barker had pay deducted.

36. On cross examination Mr Graham himself accepted that he swore at times and used foul language including "fucking" He said that he was not actually swearing at people but had been known to use these swear words in text messages. He said he was swearing at the situation.

37. An incident occurred on 23rd January 2020. At that time Mr Graham was off as he was trying to sort out his mother's estate. She had recently died.

38. Mr Graham said in evidence that he received a telephone call from one of his clients, LV Shipping. He said he picked up the call at about 3.50pm. He said he then called the claimant to pick up a load at Newton Aycliffe. At the time the claimant was in Sunderland.

39. The claimant refused to pick up the load. The claimant said in evidence that he was twenty-five miles away and that it would take him at least forty-five minutes to get there and the same amount of time to get back to the depot. He said that loading the goods could take anything between one to two hours. Mr Graham acknowledged in evidence that the journey would take about forty-five minutes and was about twenty-five miles.

40. Mr Graham then texted the claimant a little later. The text is dated 15:52. It asks the claimant if he is confirming he is refusing this reasonable request to pick up load at Newton Aycliffe – page 113. The claimant replied to that text stating I will not because it is not a reasonable request as it could possibly take me over my twelve hours.

41. The claimant said that he started work at 6.00am that morning and went to the depot. He said he went on the road at about 7.00am. The respondent says that the claimant started work at 7.00am that mornng.

42. The claimant said that, after he had received the text from Mr Graham, he called Vicky at LV shipping. The parties acknowledged that most requests from clients would go direct to the drivers undertaking the job. The claimant said in evidence that Vicky told him that they would stop loading at 4.30pm and that he would probably not get there in time. He said she also said that he could do it in the morning as he was the driver doing the delivery.

43. In evidence the claimant said that he telephoned Mr Graham back to tell him what Vicky had said to him. He also said that he referred to Mr Graham's text and said

words to the effect of “don’t give me that bloody shite about refusing reasonable instructions like you refusal you did with Rodney.

44. In evidence the claimant said that Mr Graham then said that his daughter was in the car. The claimant said he then went to apologise. In his witness statement he suggests that he did actually apologise. The claimant said that Mr Graham then put the phone down on him.

45. In evidence to the tribunal Mr Graham said that the claimant was threatening and aggressive but he could not recall in evidence how the telephone call started nor what was said during the telephone call, nor was not able to recall the words that were used. He accepted that the claimant used the words “shite”. In his witness statement he suggested in his statement that the claimant said something to the effect of you “you always come up with that fucking/bloody line Bill along with other vitriolic diatribe. He said in evidence that he could not remember the exact words used nor how the conversation had gone prior to the swearing. He admitted he out the phone down after he told the claimant that his daughter was in the car.

46. Mr Graham’s daughter was in the car. She said that she had not really been taking any notice and had been on her own phone. She said that drivers regularly telephoned her father when he was in the car. She said that she started listening when she heard the swearing and the conversation became more aggressive. She also said that she couldn’t recall any of the rest of the conversation about what was said, but all she could recall was something about the use of the word “bloody”.

47. The claimant said that he was not aggressive or threatening. The claimant went to the depot and, as was normal practice, awaited a text for the following day.

48. The claimant texted Mr Graham later that day to ask about work for tomorrow – page 113. Mr Graham replied no not at the moment. The claimant then texted again on Sunday – page 113.

49. Mr Graham then wrote to the claimant to dismiss him by letter. The letter is at page 111 of the bundle. The letter states that the claimant is dismissed for gross misconduct with immediate effect. It states that the reason for his dismissal is that, on Thursday 23rd January 2020, the claimant used foul and abusive language during a telephone call to himself. It makes no reference to any right of appeal. Mr Graham in evidence to the tribunal suggested that he had written the letter having spoken to ACAS. The letter is dated 24th January 2020.

50. The claimant then text chasing about his money on 28th January. At the beginning of that text he uses the words “no worries”. The claimant says that, at that stage, he was seeking legal advice.

51. The parties agree that the claimant was paid his salary up to 28th January 2020; being the date when he received the letter of dismissal.

52. The claimant said that he was not paid his one week’s lying-on wages. In his evidence to the tribunal Mr Graham said that there was a week’s lying-on wages

but he was not sure if that had been paid. The claimant was not paid any notice pay.

53. In his evidence to the tribunal when he was asked about the reason for dismissal and what act of gross misconduct he was relying upon Mr Graham first suggested fighting/threatening behaviour or use of physical violence being the first example in the list. When he was asked on re-examination he went on to refer to behaviour which could be discriminatory and then referred to provocative use of insulting and abusive language.

54. In his evidence to the tribunal the claimant accepted that he did not actually apologise for his behaviour either by text or nor did he attempt to go to the depot or telephone Mr Graham to apologise. In his evidence to the tribunal, the claimant admitted that his behaviour was unacceptable and that he would have expected some disciplinary action. He did not expect to be dismissed. He said that other employees had committed much more serious offences. He said swearing was not uncommon in the depot and referred to the various different incidents which had occurred as noted earlier in this judgment.

55. The claimant did not appeal against the decision. In his oral evidence he suggested that he had appealed, but no letter of appeal has been produced. He suggested that he did not keep a copy of it. Further, the tribunal note that there is no reference to any appeal in the claimant's claim form nor in his written statement.

56. Both parties agree that the claimant was paid £600.00 a week for a twelve-hour day irrespective of whether he worked for twelve hours. The claimant's net weekly pay was £452.42. He is also entitled to a pension which he has estimated is worth approximately £100.00 a month.

57. After his employment terminated, the claimant said that signed on with an agency and obtained some work with them up to the date that he obtained his new job. He said he worked various days and earned approximately £800.00 until he started his new employment.

58. The claimant obtained new employment on 25th February 2020 with AV Dawson. He is paid weekly by that company based on the number of hours he works. He says that he is earning on average £40.42 less a week. That sum is not disputed by the respondent.

59. In evidence to the tribunal the claimant said that he did not look for other work after he had obtained his job with AV Dawson because he did not think that there was any other work out there. The claimant said in evidence that he received a pay increase of 3% around Friday 6th November and that his pay is now the same as he was earning with the respondent. He has also got a pension with his new employer.

<u>Submissions</u>

60. The claimant submitted that his dismissal was unfair. He said that no procedure was followed. He submitted that he was treated differently to other employees who were not dismissed for similar offences and/or for more serious offences. He said that he was entitled to his lying-on week of wages and his notice pay. He also submitted that he had not received a statement of terms and conditions of employment because he said that document was under consultation.

61. The respondent's representative submitted that the dismissal was for conduct. He submitted that any investigation or disciplinary hearing would have been futile and the claimant would have been dismissed anyway. In that regard, he relied on the case of Polkey. The respondent's representative said that the claimant did not appeal but could have done so, because he would have been aware of the procedure.

62. The respondent also submitted that the claimant would have been fairly dismissed in any event and submitted that the claimant contributed to his dismissal. He asserted that the contribution related to both the swearing and the failure to follow a reasonable instruction. He further submitted that the claimant did not act reasonably in mitigating his loss. He said that the claimant would have obtained another job in a month if he had looked for another job. He further submitted that the misconduct was gross misconduct and the respondent was entitled to dismiss the claimant without notice. He submitted that a statement of terms of employment had been issued to the claimant and referred to the document at pages 55 – 109 of the bundle.

<u>Conclusions</u>

63. This tribunal finds that the claimant was dismissed for misconduct, namely for foul and abusive language to the respondent's managing director. Conduct is a fair reason for dismissal under Section 98 (2) of the Employment Rights Act 1996.

64. This tribunal does not consider that the respondent had reasonable grounds based on a reasonable investigation to believe that the claimant had committed an act of misconduct, as there was no attempt made to investigate the circumstances of the incident and the telephone conversation with the respondent's managing director in the car. The tribunal consider that a reasonable employer would have had a cooling down period and then attempted to investigate/discuss the matter to establish what was behind the comments before taking any disciplinary action. In this case there was no attempt by the respondent to meet the claimant to discuss the matter either at an investigatory meeting or a disciplinary meeting.

65. The tribunal considers that, at the very least, there should have been some sort of discussion, either at an investigatory meeting or a disciplinary hearing. Although it might have been futile to have had an investigatory meeting itself, it was wholly unfair to give no opportunity to the claimant to put his case or indeed have the opportunity to apologise, before the respondent dismissed him. The tribunal does not consider that any investigation or disciplinary meeting would have been futile as if a discussion had taken place between the claimant and Mr Graham and an apology was made (which the tribunal accepts the claimant had considered as

noted in his evidence which the Tribunal accepts) Mr Graham may not have dismissed the claimant. It would not have been a foregone conclusion, as it is noted that he does not appear to have dismissed employees in the past for such behaviour and he himself has exhibited not dissimilar behaviour. Furthermore, the tribunal does not consider that the behaviour was such that it warranted dismissal for the reasons set out below.

66. This tribunal does not consider that dismissal was a reasonable response in the circumstances of this case. The tribunal notes this is a haulage company. Mr Graham himself has used worse language. Further, the respondent has actually condoned worse incidents of behaviour where Mr Graham could have dismissed employees for much worse behaviour on other occasions but chose not to do so. Furthermore Mr Graham himself acknowledged that he used language that was worse than what he himself alleges was said by the claimant on that occasion. The tribunal consider that a reasonable employer in those circumstances would have let the situation cool down before meeting with the claimant and taking any disciplinary action. For those reasons this tribunal considers that the dismissal is unfair.

67. This tribunal does not consider that the conduct amounted to gross misconduct. In that regard the tribunal prefer the claimant's evidence about what language was used. His evidence was clear and specific. The evidence of both Mr Graham and his daughter were not clear or specific. The claimant's evidence about the words used is supported by Miss Graham's evidence as she herself confirms that the words used were "bloody". Mr Graham, on the other hand, was unclear about what words were used or indeed how the conversation had gone. The tribunal do not accept that the language was threatening and prefer the claimant's version of events. If the language had been threatening it is quite clear that the respondent's own letter of dismissal would have made it very clear that the claimant was being dismissed for threatening or aggressive behaviour rather than foul and abusive language. Furthermore, in his evidence Mr Graham was unclear of where the act of misconduct fell within those acts of gross misconduct referred to in the respondent's own disciplinary procedure. The letter of dismissal written by Mr Graham refers to only one of those examples of gross misconduct, yet in his evidence, he suggested three different acts of gross misconduct; two of which, including threatening behaviour, were not referred to in his letter of dismissal. For these reasons this tribunal prefers the claimant's evidence in relation to this issue which was clearer and more credible and more consistent with both the oral and, in particular the little documentary evidence available in this case. The tribunal also reminded itself the burden of proof was on the respondent.

68. Accordingly for those reasons this tribunal consider the respondent was in breach of contract. The misconduct alleged was not sufficient to amount to a breach of conduct by itself, nor was it clear the respondent considered it to be sufficient as they subsequently raised the issue of aggressive and threatening behaviour. Therefore, it was not sufficient for the respondent to terminate the claimant's employment without notice. Accordingly the tribunal finds the respondent is in breach of contract and the claimant is awarded two weeks' notice pay in the sum of £904.84.

69. However this tribunal does consider that the claimant's behaviour clearly contributed to his dismissal. He himself admitted that his behaviour was unacceptable and he expected a disciplinary sanction. The tribunal finds that it is not acceptable to use foul and abusive language of any sort to the employee's manager. In this case the person to whom the language was used was the managing director and owner of the business. Accordingly the tribunal consider that the claimant was himself at least 50 percent responsible for his own dismissal for that behaviour. However, the tribunal also consider that the claimant's failure to apologise also contributed to his dismissal, so overall the tribunal finds that he contributed to the extent of 60 percent to his dismissal.

70. The tribunal went on to consider whether the claimant would have been fairly dismissed in any event. The tribunal consider that there is a chance because the claimant did use foul and abusive language to the managing director of the respondent in front of the managing director's daughter in the context of effectively refusing a request which the respondent had considered reasonable although the claimant did not consider it reasonable. Clearly he was effectively in some way undermining Mr Graham's authority. The tribunal therefore consider that on a just and equitable basis that there should be a further reduction of compensation taking into account there is a chance that the claimant would on that basis have been fairly dismissed in any event. Accordingly his award should be further reduced by a further 20%.

71. The tribunal find that the respondent did not follow the ACAS Code of Conduct. There was no investigation into the matter. There was no disciplinary hearing and no right of appeal was offered to the claimant. The tribunal find that the claimant did not appeal, but also find that he was not told of his right of appeal. Accordingly the tribunal consider that there should be an uplift of the award by 15% to reflect the failure to comply with the ACAS Code of Practice.

72. The tribunal also do not consider that the claimant acted reasonably in mitigating his loss after he obtained new employment. As he obtained new employment within a month the tribunal consider that if he had continued to look for employment, he would have obtained new employment within a few months and have estimated that to be within three months of him obtaining new employment.

73. Accordingly the claimant is awarded compensation for unfair dismissal as follows:-

Basic award	**£**	**£**
2x one and a half x£525 (statutory limit)		1575.00
Less 60% contribution	£945	
Total basic award		£630
Compensatory award		
28th January – 25th February		
Less 2 weeks' notice pay		
2 weeks x £452.42		£904.84
Less sums received from alternative employment	£800.00	

Sub total		£104.84
Pension loss		£100.00
Losses for period 25 Feb – 24 August 13 weeks @£40.42		£525.46
Loss of statutory rights		£350
Subtotal		1080.30
Less 60% contribution	£648.18	
Less Polkey deduction at 20% subtotal	£86.42.	£345.70
Add uplift for failure to follow ACAS Code of Practice 15%	£51.85	
Total compensatory award		£397.55.
Total award for compensation for unfair dismissal		£1027.55

74. The tribunal finds that the claimant is entitled to his one week's lying-on wages. The respondent did not contest this claim. Mr Graham's evidence was that he accepted that the claimant had a week lying-on and was unable to prove it had been paid. Accordingly the claimant is awarded the sum of £452.42.

75. The tribunal finds that the claimant was issued with a statement of terms and conditions of employment. The document at page 155 was issued as a basic statement upon joining the respondent company. The claimant was then issued with a detailed document at page 155 – 108 of the bundle which clearly sets out all of the provisions which one would expect to see in a statement of terms and conditions of employment. The claimant suggests that this was a consultation document, yet he has not indicated what if any consultation took place or the outcome of any consultation. Furthermore it does not appear that any further document was issued following the consultation. Accordingly the claimant's complaint of a failure to provide a statement of terms and conditions of employment is not well-founded and is hereby dismissed.

EMPLOYMENT JUDGE MARTIN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 7 December 2020

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