RESERVED

Case No. 2411643/2023
2411720/2023
2411718/2023
2411635/2023

EMPLOYMENT TRIBUNALS

Claimants:
1. Mr P Martin
2. Mr R Stewart
3. Mr G Rogers
4. Mr I Vermiglio

Respondent: Royal Mail Group Limited

HELD AT: Liverpool in person **ON:** 23, 24, 25, 26 & 27 September 2024 and 23 & 24 October 2024 (in chambers).

BEFORE: Employment Judge Shotter (sitting alone)

REPRESENTATION:

Claimant: Mr Jangra, counsel
Respondent: Mr Chaudhry, counsel

RESERVED JUDGMENT

The judgment of the is:

1. The first, second, third and fourth claimants were unfairly dismissed and their claims of unfair dismissal brought under section 94 and 98 of the Employment Rights act 1996 as amended is well-founded and adjourned to a remedy hearing listed for **27 & 28 February 2025** before Judge Shotter in person at the Liverpool Employment Tribunal. The parties will be sent a separate notice of hearing.

2. It is just and equitable to reduce the basic and compensatory award of the first, second and third claimants by 25 percent under sections 122 and 123 of Employment Rights Act 1996 as amended.

3. It is not just and equitable to reduce the basis and compensatory award of the fourth claimant.

REASONS

Preamble

1. Mr Martin, the first claimant, presented his claim for unfair dismissal on the 6 November 2023 following the issue by ACAS of the Early Conciliation Certificate on 16 October 2023.

2. Mr Stewart, the second claimant, presented his claim for unfair dismissal on the 10 November 2023 following the issue by ACAS of the Early Conciliation Certificate on 9 November 2023.

3. Mr Rogers, the third claimant, presented his claim for unfair dismissal on the 10 November 2023 following the issue by ACAS of the Early Conciliation Certificate on 10 November 2023.

4. Mr Vermiglio presented his claim for unfair dismissal on the 6 November 2023 following the issue by ACAS of the Early Conciliation Certificate on 16 October 2023.

5. Various orders were made to the effect that the claims were to be considered together.

6. The hearing bundle totals 919 pages. In addition, there 67 documents have been produced, together with various other documents including page 535a and 52.

Agreed issues

7. The issues were agreed between the parties from the outset and prior to oral submissions being made as set out below:

Unfair Dismissal s98 Employment Rights Act 1996

1. What was the reason or principal reason for the Claimants' dismissal? Was it a potentially fair reason? (s.98(1), (2) ERA 1996

    a. The Respondent relies on the potentially fair reason of conduct.
    b. The Claimants argue that the reason for their dismissal was not conduct but due to the Respondents concerns about the public perception of the Claimant's gathering to take their rest breaks when they were facing concerns from the public about the quality of its service.

2. Did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged misconduct as a sufficient reason for the Claimants' dismissal?

3. In particular did the Respondent form:

    a. A genuine belief that the Claimants were guilty of the misconduct alleged?
    b. There were reasonable grounds for the Respondent's belief that the Claimants had carried out the misconduct.

    c. At the time the belief was formed the Respondent had carried out a reasonable investigation

4. Was dismissal a sanction within the range of reasonable responses open to the Respondent?

    a. The Claimants submit that the Respondent was not consistent in the sanctions applied for the alleged misconduct.

    b. If not, did the claimants contribute to their dismissal through their conduct?

5. Did the Respondent follow a fair procedure?

    a. The Claimants submit that the investigation and disciplinary meeting was not conducted by an independent manager due Jake Nurse having been involved in the fact-finding.
    b. The Claimants submit that their mitigation (length of service and clean disciplinary record) was not adequately considered.
    c. The Claimants submit that the decision to terminate their employment was already made by the Respondent prior to any disciplinary meeting taking place.

7. If the dismissal is found to be procedurally unfair, would the claimants have been fairly dismissed in any event had a fair procedure been followed?

Witness evidence

8. The Tribunal heard oral evidence from the four claimants under oath, and on behalf of the respondent it heard from Jake Nurse, Operations Performance Lead, Dismissing Manager, and Rebecca Rees, Independent Case Manager who heard the appeals.

9. There was a considerable amount of duplication in the four claimant's written statements. Mr Chaudhry submitted that the word for word duplication in the claimant's witness statement is a cause for concern, and "casts doubt on the accuracy of the truthfulness of the information conveyed in their statements because they did not rely in the main on their own words." I agree. It is unfortunate the witness statements do not appear to reflect the actual words of the individual. The claimants were cross examined on this and I was satisfied that the claimants gave some repetitive evidence due to the overlap of the facts, and the evidence they gave on disputed matters was largely credible when they used their own words and responded to questions. When it came to the issue of contributory fault I was not satisfied they had breached a management instruction on the balance of probabilities, but wholly satisfied the first, second and third claimant had been dishonest in the fact finding meeting.

10. The Tribunal was referred to various documents in the agreed bundle, the written statements and a chronology that is not expressly agreed by the claimants but uncontroversial. Having considered the oral and written evidence and written and oral submissions presented by the parties (the Tribunal does not intend to repeat all of the submissions, but has attempted to incorporate the points made by the parties within the body of this judgment with reasons), I have made the following findings of the relevant facts resolving the conflicts in the evidence.

Facts

11. The respondent is a nationwide company employing many thousands of employees to manage and deliver the mail and parcels throughout the United Kingdom.

12. The respondent has nationally agreed standards for the conduct of its employees and these standards are set out in the National Conduct Procedure Agreement between Royal Mail Group and CWU and Unite-CMA version 3 August 2015 and a Royal Mail Conduct Policy set out in a document tiled "Our Business Standards an Employee's Guide." The "Guiding Principles" expressly include **that "no employee will be dismissed for a first breach of conduct** except in the case of gross misconduct when the penalty will normally be dismissal without notice or payment in lieu of notice" [my emphasis].

13. The express employee obligations include the requirement that "they seek help as soon as they recognise that they are in a situation which could compromise their behaviour" and "follow any reasonable instruction of their manager."

14. Gross misconduct is defined as "some types of behaviour are so serious and unacceptable, if proved, to warrant dismissal without notice…it is not possible to construct a definitive list." The examples of gross misconduct include "deliberate disregard of health, safety and security procedures or instructions." In the list there is no reference to failing to follow any reasonable instruction of their manager" in the non-definitive list.

15. "The Royal Mail Group Conduct Policy" version 02 January 2018 sets out a number of conduct penalties ranging from warnings given by first and second level line manager to suspended dismissal and summary dismissal given by second level line managers. Downgrading an employee is a possible conduct penalty "reserved for the most serious cases where dismissal is being considered." The power to dismiss is limited to second level managers.

16. Nowhere in the respondent's documents including "Our Business Standards" is there a provision to the effect that employees taking breaks in public houses or car parks lying adjacent to public houses breached business standards concerned with example, health and safety, regulatory compliance, criminal behaviour, conflicts of interest, dishonesty and Intentionally delaying mail. There were no reference to employees being liable for behaviour that resulted in negative comments against Royal Mail on social media.

17. It is undisputed the claimants were in receipt or, or had access to the respondent's Policies and Procedures relating to the conduct expected of them and what would happen if they fell short of it. The claimants were issued with a Statement of Terms and Conditions of Employment Long Term Contract for Operational Postal Grade.

18. Paul Martin commenced his employment on the 22 March 2004 as an operational postal grade until he was summarily dismissed for gross misconduct on the 11 August 2023. Paul Martin had an unblemished employment record.

19. Robert Stewart commenced his employment on the 8 April 2002 as an operational postal grade until he was summarily dismissed for gross misconduct on the 11 August 2023. He had an unblemished employment record.

20. George Rogers commenced his employment on the 2 April 1979 as an operational postal grade until he was summarily dismissed for gross misconduct on the 11 August 2023. He had an unblemished employment record.

21. Ian Vermiglio commenced his employment on the 31 July 2018 as an operational postal grade until he was summarily dismissed for gross misconduct on the 11 August 2023. He had an unblemished employment record.

22. The claimants were all employed at operational postal grade responsible for driving vans and/or accompanying drivers delivering the post on allocated rounds based in the Prenton office on the Wirral, Merseyside. The Prenton office was poorly performing against a backdrop of redundancies, insufficient numbers of employees resulting in a backlog on delivering the mail and mental health concerns amongst employees was a serious health and safety concern as there had been a suicide. It is undisputed employees and managers did not always get on, and during the relevant period there was a deteriorating relationship between postal workers and managers.

The custom and practice of taking breaks described as "meal relief"

23. The claimants required legal breaks and it had been custom and practice until October 2022 without any need to consult or inform managers for postal workers to take a 40 minute break (referred to as "meal relief") at the end of the shift if they chose to do so, which meant for some individuals meeting up with colleagues and for others going home early. This was an issues for the respondent and from October 2022 the respondent recorded postal workers through an electronic signing in and out system. It also provided the postal workers, including the claimants, with a list of approved places to be accessed during breaks which included named GP surgeries and named public houses including toilet facilities and the like, rather than taking a break from the round and return to the Prenton office. The evidence before me was that postal workers, including the claimants, had been instructed not to return to the Prenton office until the end of their shift. One of the approved places was the Carnarvon Castle Pub who welcomed the postal workers by providing them with tea, coffee and cakes during their break. For the avoidance of doubt it is undisputed that thee was question of postal workers drinking alcohol during their break. Managers were aware that colleagues were meeting up in the Caernarvon Castle to take their breaks and on one occasion in March 2023 a manager asked Paul Martin to join him there. The Carnarvon Castle was thus a popular stopping off point because postal workers could pass it on the way back to the Prenton depot, and an average of 8 to 10 colleagues could be together taking their break there before returning to the depot with no criticism or comment from management.

24. By March 2023 the relationship between the respondent's managers and postal workers deteriorated due to staffing cuts and a perception that postal workers were put under pressure to perform additional duties to increase the service failure issues and poor public perception of the respondent's business.

25. On the 12 June 2023 when the postal workers were preparing for their duties, their manager, Aaron Bolger the customer operations manager, met them in a "huddle" to discuss the meal relief and instructed them that they could no longer take a break at the Caernarvon Castle Pub and that any staff that disobeyed the instruction would be disciplined. Aaron Bolger told those present (approximately 15 to 20 postal workers) that there had been complaints from the public due to the mail backlogs and in the words of Paul Martin "it therefore did not look good on the respondent if postal workers were seen in public not delivering mail." Aaron Bolger made no reference to any other public house or public area such as car parks, and nor did he inform those present that they should not meet up for breaks. Aaron Bolger did not consider his instruction was important enough to inform postal workers who were not present during the huddle and it was not confirmed in writing. In short, it was an oral instruction given at an informal meeting that was not cascaded throughout the business.

26. George Rogers was not present at this huddle, the other three claimants were and understood from Aaron Bolger's instruction that they were not to return to the

Caernarvon Castle pub, which they did not from that point on. Aaron Bolger did not make it clear to those present that meeting in a car park close to any public house as opposed to going inside a pub and taking their break there was also prohibited, and as at the 12 June 2023 there was nothing said to put the claimants on notice that they could not meet in a car park to take their break, and if they did meet dismissal could follow. There was no refer to the Swan carpark being out of bounds or the postal workers prohibited from meeting each other during their breaks at the end of the shift.

27. It is notable that once the claimants were instructed not to go into the Caernarvon Castle public house from that point on they obeyed the instruction, and there was no suggestion (apart from by Mr Chaudhry) that the claimants took umbrage and decided to meet from that point on in a car park adjacent to a different pub, namely, the Swan car park. There is a dispute as to whether the Swan car park was a public car park or a pub car park. It lies adjacent to and across the road from the Swan Public house and could conceivably fall under both definitions given the undisputed evidence that the public parked there.

<u>20 June 2023 meeting</u>

28. On the 20 June 2023 a Joint Briefing took place between a number of postal workers, Chris Nichol and James ("Jamie") McGovern, (union representative Area Health & Safety) regarding health and safety, mental health concerns and well-being of staff that included breaks. No notes were taken or distributed following the meeting and recollections as to what was said differ. The claimants all attended this meeting and recollect Chris Nichol only made reference to the instruction that they could no longer take breaks at the Caernarvon Castle with no other premises or location mentioned. During the disciplinary investigation James McGovern produced a statement dated 26 July 2023 in relation to what took place on the 20 June 2023 that referred to his concerns about postal worker stress in which context he raised the importance of taking breaks and "effective rest" including the break split 20/20 or 30/10 in relation to the 40 minute allowance "and a consensus agreement was needed on this issue to remove ambiguity…**I empathised that local discussions are key as these will shape the final break agreement. It was also mentioned that there would/could be a local committee to discuss and shape this final break agreement**" [my emphasis]. This is an important point in that it is clear no agreement was reached at the 20 June 2023 meeting concerning the taking of breaks at the end of the day in direct contrast to Chris ~Nichol's evidence at this liability hearing which raised credibility issues. James McGovern made no reference to a discussion concerning a ban on groups of postal workers meeting up in public houses, car parks linked to public houses or any public spaces including the Swan car park. It is unfortunate James McGovern was not asked about the instructions Chris Nichol gave at the 20 June 2023 meeting and the words he used, during the disciplinary investigation and as found below, this omission on the part of the respondent gave rise to an investigation that fell outside the band of reasonable responses.

29. The upshot of the 20 June 2023 meeting is that as far as the claimants were concerned postal workers could take their breaks in public car parks, they were not required to drive past if other colleagues had parked up the same car park and it did not occur to them to check with managers given they had not done so in the past.

30. On the 21 June 2023 Ian Vermiglio had completed his shift and was entitled to a 60 minute break which he took in the car park adjacent to the Swan public House. The respondent has not produced any evidence as to the time spent and it cannot dispute Ian Vermiglio assertion that he spent less time than his allocated break at the Swan car park.

31. Paul Martin drove the van on the 21 June 2023 and was partnered by George Rogers. At the end of the shift both were entitled to a break of 60 and 40 minutes respectively which was taken in part (and not full) at the Swan public house car park the afternoon of the 21 June 2023.

32. Robert Stewart drove the van and was partnered with Neil McKlevey and at the end of the shift both agreed to take their break at the Swan public house car park at approximately 13.50 on the 21 June 2023. Both took less than their entitled break.

33. A number of other postal workers also took a break at the end of shift on the same date at around the same time approximately with the result that some 6-7 vans were parked at the bottom part of the Swann car park away from the public entrance and the Swann pub. Chris Nichol drove passed and took note of the situation, saying nothing to any of the postal workers in the car park, preferring to report what he had seen to Jake Nurse, Operations Performance Lead who eventually dismissed the claimants. Jake Nurse was thus involved in the disciplinary from the outset, Chris Nichol in his own words having "raised my concerns…given the level of failures within the unit that day and also the failure to follow any instruction only given out the day prior" (see 26 June 2023 email below). Jake Nurse was not independent and was biased against the claimants when he considered whether they were guilty of gross misconduct.

34. In an email dated 26 June 2023 sent from Chris Nichol to other managers (and not the claimants) reference was made to him having stressed the importance of professionalism "whilst we work through some of the issues as it has been raised anonymously that people we[re] being made uncomfortable "…for not attending a congregation at either pubs or carparks where staff had previously been taking breaks. **I reiterated to the staff, who I am aware have been told on previous occasions** that it is not acceptable to be meeting for a communal break at any location, including the Carnarvon Castle and Swan Public car park…" [my emphasis]. Reference was made to "numerous reports about this, and "Jamie McGovern also reiterated the message from a CWU standpoint and communicated that it was unacceptable to be breaking away from delivery to take communal breaks." It is notable that James McGovern did not say this in his witness statement taken at investigation stage, and Jake Nurse failed to pick up on this discrepancy

and explore it further, so convinced was he that Chris Nichol was right in his recollection of the instruction given on the 20 June 2023.

35. It is notable the 26 June 2023 email refers to Chris Nichol's entry that on the 21 June 2023 "I decided to take a drive around the area…to confirm the message had landed with the team. Upon passing the Swan public car park I immediately noticed approximately 7 RM vehicles either parked or parking in the adjacent car park to the swan public house. I raised my concerns with Jake Nurse…" Mr Chaudry submitted that Jake Nurse was entitled to accept Chris Nichol's version of events because he had taken the step of checking employees were following his instruction by driving to the Swan car park.

Suspension

36. On the 23 June 2023, Jonathan Crook, custom operations manager, suspended the claimants individually. He did not orally set out any of the allegations and passed to each a suspension letter of the same date. The 23 June 2023 letter referred to allegations relating to "further investigations into your absence from point of duty where you met with colleagues in the Swan public car park…this is a failure to follow workplace procedure and an act to intentionally delay mail…As the situation is confidential, it is important you do not discuss the details of the case with your work colleagues." The claimants were not put on notice that any discussion with colleagues could result in disciplinary proceedings and dismissal. The allegation came from Chris Nichol's and Jake Nurse did not question why an allegation relating to intentionally delaying the mail had been brought when the respondent's IT system recorded the time spent at the Swan car park with the exception of Ian Vermiglio for whom there was no data. The data reflected that all those present at the Swan car park were parked up for a shorter period of time than their allocated break, and as the Swan car park was on the way to the Prenton office there could be no question of intentionally delaying the mail. The inclusive of this allegation for which there was absolutely no basis may have raised a question over the evidence given by Chris Nichol, who in his capacity of customer operations manager was required to deal with the two customer complaints over the postal workers sitting in the Caernarvon Castle drinking coffee/ tea and eating cake during their breaks with the knowledge/approval of managers.

Aftermath of suspension: McDonalds.

37. Very close to the Prenton office a McDonalds is frequented by postal workers on a regular basis.

38. Immediately on being suspended the claimants were in shock and congregated outside the office discussing who to contact in the union and agreeing to stop for a coffee on their way home to arrange union representation. I have heard much evidence as to what was agreed; whether the claimants accidently met up at McDonalds or reached an agreement concerning meeting up. The upshot is that all four claimants at some point sat around the table together with another work

colleague not involved in these proceedings. A mobile phone was used to call a CUW representative for guidance. They were advised to "follow the instructions i.e. leave the premises" according to Robert Stewart, which they did. The claimants have all given evidence under cross- examination that they did not open the suspension letter until they arrived home, which is not credible given the fact that they were seeking assistance from the CWU and had been told to follow instructions, i.e. the instructions in the suspension letter. It is more likely than not the letters were opened in McDonalds than outside the office, and not at home.

39. The investigating manager, Jonathan Crook, held a number of fact finding meetings in or around late June 2023.

Action against the 12 postal workers

40. Twelve postal workers were suspended on full pay. Three of the twelve were dealt with by their front line managers. Following a fact finding meeting held separately by Jonathan Crook with postal workers CB, SW, AO'B and DS, AO'B was referred to Stuart Holsgrove "to consider formal notifications 1. Met in Swan public car park on 21 June 2023 – failing to follow instructions. ". Unintentional mail delay. 3. Going off route to meet in a car park. 4. Brand impact due to social media attention" "carefully considered all the circumstances of your case and my decision is…notifications upheld…serious warning 24 months…" In the Decision Report Stuart Holsgrove referred to "Jonathan Crook passed the case to 1st line for conclusion **because he believed the potential penalty award could be dealt with at this level**" [my emphasis]. Jonathan Crook produced no written report as to his reasoning for referring some postal workers to first line managers who did not have the power to dismiss.

41. Stuart Holsgrove found AO'B had failed to follow a reasonable instruction given by local management where he attended the car park adjacent to the Swan public house on the 21 June 2021, he had failed to complete his workload and report the mail failure to his manager on the 21 June 2023, he had deviated from the route to pull into the car park against instructions and social media attention "regarding the case, where [AO'B] was perceived to have been parked near a public house with colleagues has had a negative impact on the current media attention regarding USO and the other challenges the business is facing…I have considered what penalty would be appropriate in this instance. I have considered [AO'B] conduct record, which is currently clear and…length of service…which is over 15 years."

42. In referring the disciplinary case of AO'B to Stuart Holsgrove, Jonathan Crook made the decision that AO'B would not be facing the possibility of dismissal because at first line level Stuart Holsgrove was limited in authority to the maximum of a serious warning with transfer within area and a timescale of 12 to 24 months. No explanation was forthcoming in any contemporaneous document generated by Jonathan Crook and/or Stuart Holsgrove why AO'B was not referred to a second level manager who could also have suspended for the same time period if he or she had decided not to dismiss.

43. There is a paucity of information about Jonathan Crook's decision making process with regards to CB, SW, AO'B and DS including what information he had when deciding in effect which employee would face a possible dismissal and which would not bearing in mind that all the postal workers were suspended for meeting in the Swan public car park and in so doing impacting on the respondent's brand. The information before me is confused and confusing, for example, at page 52 of the bundle a document prepared by Jonathan Crook on the face of it tables when the individual postal worker left the office, stop times, time at car park, office return time and last scan with the exception of PJ and Ian Vermiglio who had no data against their names other than the last scan time which made no sense. The information recorded that ND was 44 minutes in the car park, the longest time, and Paul Martin 28 minutes, Robert Stewart 26 minutes and George Rogers 26 minutes. Robert Stuart was partnered with Neil McKelvey, who was not dismissed, and the record shows the latter was in the car park for 21 minutes and this reflects a discrepancy in the information provided taking into account that both were in the car park together.

44. A table produced by the respondent without any supporting evidence apart from AO'B above, reflects no further action was taken against CJ and CB. AO'B first line manager awarded his misconduct with a 2 year serious warning. The table is incomplete, for example, "Name of member" is blank – overall conduct penalty awarded, next line "to be confirmed" 2nd line conduct 2 year suspended dismissal, followed by 6 summary dismissals including the four claimants. The full information and decision making process concerning the penalties given to other postal workers parked at the Swan public car park was not before the dismissing or appeal officer. It was not entirely clear why Jonathan Crook took the action he did, and the basis of the disciplinary decision making process by first line managers is also unclear. Jake Nurse and Rebecca Rees did not get to grips with the different treatment given to other employees and the claimants, who were dismissed, and their failures gives rise to a procedural and substantive unfairness falling outside the band of reasonable responses.

<u>The 4 allegations referred to as "notifications."</u>

45. Following the fact finding meetings and further investigations the claimants were charged with the following disciplinary allegations referred to as "notifications":

45.1 Notification 1: On 21 June 2023, the claimant failed to follow a reasonable managerial instruction, in that he decided to meet with a number of colleagues in The Swan pub carpark, during his working day when being briefed on numerous occasions not to meet up outside of the Delivery Office. The claimant intentionally went off his delivery route, which resulted in him driving an additional mile and not being productive during work hours. This behaviour is not in line with business standards.

45.2 Notification 2: On 21 June 2023, the claimant intentionally delayed the mail by leaving due mail in his frame. Whilst out on delivery he then decided to take an extended break which could have been used to deliver the mail he left behind. The behaviour is not in line with business standards.

45.3 Notification 3: On 23 June 2023, the claimant was dishonest in stating that he went straight home after Chris Nichol sent him home, but later at 08.13am, he was seen to be in the McDonalds next to the Delivery Office with his work colleagues. The likely reason for his meeting, and his dishonesty when questioned about it, is that he had been discussing confidential matter related to his conduct case, in breach of the conduct standards.

45.4 Notification 4: On 21 June 2023, the claimant met with a number of colleagues in The Swan Pub carpark meaning there was a total of 7 Royal Mail vans parked together. The claimant's behaviour has resulted in negative comments against Royal Mail on social media inclusive of "makes me laugh coz if you go past The Caernarfon Castle pub on a Friday afternoon the vans are lined up outside" and "…not just Fridays x they "sit off" in the Caernarfon until about 2.25 to clock off at 2.30pm when they all get in their vans x no respect from me anymore".

46. The claimants were invited to attend a formal conduct interviews with Jake Nurse on various dates, and informed that one outcome could be dismissal and of their right to be accompanied.

47. Jake Nurse was provided with a number of statements from employees, including Aaron Bolger and Chris Nichols taken by Jonathan Crook. It is notable that Aaron Bolger confirmed he had attended the 20 June 2023 meeting primarily about workload and "with CWU backing, a brief would be held around the style of breaks the members of staff were currently taking (at a local pub) and it was to stop…They were told not to take their break at the end of the day and under any circumstances were not permitted to take any part of their break at the pub or meet up with other colleagues at any other location. They were advised to take their breaks on and in between their duties." He alleged that SC (whose name was not expressly referenced in the list provided by the respondent at page 230) said he was "not scared to take my break at the Caernarvon" to which Aaron Bolger responded "If I found out anybody had ignored the instruction then we would have a conversation the following day and I would be involving the CWU and senior management." Aaron Bolger did not say that dismissal was mentioned and I find the claimants were not put on notice that if they met in a car park disciplinary proceedings for gross misconduct could follow.

48. It is notable that Aaron Bolger confirmed he had never spoken to staff about taking breaks together. The evidence before me supported by contemporaneous documentation was that a decision was not made about break times until after the 21

June 2023, and this was not investigated at any stage during the disciplinary process, and the lack of any agreement factored in when balancing the evidence given by Aaron Bolger and Chris Nichol about what was said at the 20 June 2023 meeting with that given by the claimants and their colleagues, including James McBride who was clear that a future agreement was necessary.

49. In his statement taken by Jonathan Crook Chris Nichol referred to the meeting held on 20 June 2023 as follows; "I mentioned that we were aware the original meeting was Caernarfon Castle and that we had recently been made aware of the Swan public House and under no circumstances should this continue…Jamie reiterated my point around behaviours and that congregating for a break was against policy and that breaks should be taken on the delivery route…" Jake Nurse had before him witness statements from postal workers who had witnessed the claimants and their colleagues parking and congregating at the Swan pub car park, one was dated 12 June 2023 before the 21 June 2023 incident and 20 June 2023 meeting.

50. Paul East an OPG who stopped in the Swan car park on the 20 June 2023 provided a statement confirming he had not attended the 12 June meeting and at the 20 June 2023 meeting Chris Nicol "reinforced the standing of Royal Mail about not going to Caernarfon Castle public house. **He then said the problem needs to be addressed and how and when we take our breaks needs to be discussed…this was something that will be addressed when Mr Bolger returns the following week**…I can categorically say that the instruction I got was to stay away from the Caernarvon pub due to the complaint and we will sort out meal relied times on Monday…" [my emphasis]. Paul East self-reported that he had attended the Swan car park and was told by Chris Nichol that it could not be proven and to go back to work. No action was taken was taken against him, and this information was not taken into account at disciplinary or appeal stage.

<u>Suspension weekly review letter and invite letter</u>

51. On the 3 July 2023 the claimants were sent the first weekly review letter confirming the ongoing suspension.

52. In an invite letter dated 25 July 2023 Paul Martin was invited to a disciplinary hearing to be held on the 31 July 2023. The allegations totalled four including a new allegation "Notification 3: On 23 June 2023, the claimant was dishonest in stating that he went straight home after Chris Nichol sent him home, but later at 08.13am, he was seen to be in the McDonalds next to the Delivery Office with his work colleagues. The likely reason for his meeting, and his dishonesty when questioned about it, is that he had been discussing confidential matter related to his conduct case, in breach of the conduct standards." The contents of the letter met the requirements set out in the ACAS Code of Practice.

27 July 2023 email regarding agreed meal relief plan

53. Ian Corrin, CWU representative emailed Stuart Holsgrove and Jake Nurse on the 27 July 2023 confirming that the meal relief plan had been agreed and was to start on the 31 July 2023. There was no reference to any instruction concerning congregating in the 20 minute allowance at the end of duty, or any limitation on where staff could take their breaks. The email is a contemporaneous document before Jake Nurse which he did not factor in his findings and decision to dismiss against a background of no agreement as to breaks/meal relief having been reached by the time the alleged offence had taken place and postal workers carrying on with taking their breaks as per custom and practice albeit avoiding the going into the Caernarvon Castle as instructed.

Fact finding meetings

54. Between the 28 June 2023 and 25 July 2023 Jonathan Crook carried out fact finding meetings with Robert Stewart, Paul Martin, George Rogers, Ian Vermiglio, and Robert Stewart. All the claimants set out their understanding of what had been said (and not said) on the 12 and 20 June 2023. Robert Stewart, Paul Martin and George Rogers all denied discussing their case with anyone and meeting up with colleagues when they were pre-cautionary suspended. Ian Vermiglio stated he had not discussed the case with anyone and "after we were all suspended I went to McDonald's for a bite to eat and there were some colleagues there…I wasn't part of any discussion didn't speak to anyone."

Disciplinary hearing Paul Martin 31 July 2023

55. The meeting took place on the 31 July 2023 at which the claimant was accompanied by his CWU representative. Paul Martin confirmed he had worked for the respondent for 20 years and had a good employment record. The issue before Jake Nurse was whether Paul Martin had been instructed by Chris Nichol not to go to the Swan public car park or any pub public car park or not. Paul Martin confirmed they had been told not to go to the Caernarvon, he had not visited that pub since and did not think there was an issue with meeting in a public car park adjacent to the Swan public house.

56. There was a great deal of discussion about mail volume on the 21 June 2023 that ran for a number of pages in the transcript before Paul Martin was questioned about the suspension, confirming he was in the photograph taken of colleagues at MacDonalds immediately after being suspended. Paul Martin's response was a direct contradiction of the information he had provided at the fact finding meeting when asked by Jonathan Crook "have you discussed any aspect of this case with anyone" and "when you were pre-cautionary suspended did you meet up with other colleagues" he answered "no." After being shown the photograph and accused of lying Paul Martin responded "I didn't lie as such; you can see that we were there but it wasn't intentional" and confirmed the first thing that they did was contact the union about the suspension. Paul Martin accepted that "this could be deemed collusion"

and when he was pressed on whether he had lied about McDonald's responded "no, not really" and that it might look as if they all met to "get your stories straight" but had not discussed the case.

57. Jake Nurse raised the issue of public perception and social media posts criticising the respondent for staff in the Caernarvon "for a sit off until it is time for them to clock off." Paul Martin conceded "doesn't look a good image" but he was "not ashamed…the customers don't now that we were on our breaks…It's sad that they think like that, but they don't know the true facts."

58. A number of mitigation points were raised at the meeting including the fact that using the Swan/Holmes Lane car park "was never raised to anyone as a potential misconduct issue either informally or formally" and comments made by the public concerning the Caernarvon Castle, a location not used since the Aaron Bolger instruction of 12 June 2023, "was out of the control of all Royal Mail employees…The Royal Mail Code of Agreement states on [p6] under 'Employees rights and considerations' that employees will be treated in an impartial and non-discriminatory way, by apportioning the blame on them for something totally out of their control, you are not adhering to the employee rights and considerations."

Outcome letter 9 August 2023 to Paul Martin

59. In a written decision dated 9 August 2023 Jake Nurse upheld all four notifications and dismissed without notice, the effective date of termination being 11 August 2023.

60. In a decision report he concluded in relation to Notification 1: On 21 June 2023, the claimant failed to follow a reasonable managerial instruction, Jake Nurse found that whilst Paul Martin was not the driver, he had agreed with George Rogers to go to the Swan car park, preferring Chris Nichol's evidence that he made staff aware they should not take breaks at both Caernarvon Castle and Swan car park. Jake Nurse did not factor in that other non-drivers found at the Swan car park were not dismissed.

61. Jake Nurse does not mention other witness evidence on this issue, including that given by James McGovern where no mention is made of this, he was not asked the key question about what was said at the 20 June 2023 meeting. Jake Nurse did not take into account the clear evidence before him that an agreement was yet to be reached on breaks and how they were taken, the fact that no employee was put on notice that going to the Swan car park "against a background of the Swan Public house and other public houses being suitable for breaks including toilet breaks" could result in dismissal. Jake Nurse did not take into account the fact that neither Aaron Boulger or Chris Nichol's checked with employees to make sure they had a clear understanding of their instruction and whether it included physically going into one pub – the Caernarvon Castle or parking in a public car park adjacent to a pub, and confirming the position in writing for the avoidance of doubt. Jake Nurse did not take into account the possibility that Chris Nichol's recollection of what he had said

was incorrect and/or may have been unclear in any way against a background of all postal workers complying with Aaron Boulger's instruction immediately it was given. Finally, there is no satisfactory evidence that Jake Nurse took into account the fact Paul Martin had a clean employment record of 20 years and apart from the response to the McDonalds question (see below) there was no issue with his honesty. I find as a matter of fact Jake Nurse did not objectively assess the evidence, he was aware from the outset of the allegation and despite dismissal being a possible outcome, did not balance the evidence given by Chris Nichol with other evidence which contradicted it, and did not look for evidence which could show Paul Martin in good light.

62. When dealing with allegations that can result in summary dismissal Jake Nurse's conclusion fell outside the band of reasonable responses; "even if I were to accept is version of events in that he did not know about the Swan car park, common sense should have prevailed when he saw the other Royal Mail vehicles parked in the car park and he should have linked the two situations or as a minimum sought clarity from his manager" did not taken into account the lengthy custom and practice where postal workers had parked in the Swan car park regularly in the past, it was an accepted stop off point on some routes, on the way to the Prenton office and no agreement had been reached on rest breaks/meal relief.

63. With reference to Notification 2: On 21 June 2023, the claimant intentionally delayed the mail by leaving due mail in his frame. Whilst out on delivery he then decided to take an extended break which could have been used to deliver the mail he left behind. I find there was no basis for Jake Nurse upholding this allegation, as in the case of all claimants an extended break was not taken and the mail was not intentionally delayed. All the claimants took less time than they were legally entitled to in their break. This finding reflects Jake Nurse's closed mind and the less than objective view he took of the evidence throughout this disciplinary hearing and so I find as a matter of fact. This unfairness was put right on appeal.

64. With reference to Notification 3: Jake Nurse had sufficient information to conclude that on the 23 June 2023, the claimant was dishonest in stating that he went straight home after Chris Nichol sent him home, but later at 08.13am, he was seen to be in the McDonalds next to the Delivery Office with his work colleagues. Jake Nurse relied on the photograph of the claimant and his colleagues sitting together, the likely reason for this meeting, and his dishonesty when questioned about it, concluding discussing confidential matter related to the conduct case, in breach of the conduct standards. Jake Nurse did not check the policies and procedures or the suspension letter, and had he done so it would have been clear that there was no mention of meeting up with suspended colleagues being a disciplinary office for which an employee could be dismissed for breaching confidentiality.

65. With reference to Notification 4 there is no evidence Jake Nurse took into account the fact that the public media posts concerning the Caernarvon public house were outside individual employees control against a background where it was

custom and practice for individuals to take legitimate breaks in a number of different venues, including inside the Carnarvon Castle public house. The conclusions taken by Jake Nurse in respect of this allegation reflect his closed mind to the possibility that public medial posts reflected a lack of management accountability and not criticism of individual postal workers who were carrying out their day-to-day usual activities, such as stopping off in the Carnarvon Castle during their contractual break for tea, coffee and cake that was laid out for them according to custom and practice, in the knowledge of line managers. Jake Nurse's expectation that Paul Martin should effectively "fall on his sword" and admit to the gross misconduct and show remorse was unreasonable. Jake Nurse's conclusion that after 19 years of service Paul Martin should have "felt ashamed" about the social medial posts expressing "I am deeply concerned of his lack of remorse that members of the public had this opinion of Royal Mail" was also unreasonable and did not take into account the wider picture including the fact that Paul Martin was a long term employee who had for almost 20 years complied with the respondent's business standards and been an honest employee.

66. Jake Nurse's belief that the claimant "tried to mislead a manager in the fact finding interview when asked what he did after being suspended" was genuinely held and based on a fair investigation that fell well within the bands of reasonable responses. Finally Jake Nurse gave no thought whatsoever to the sanctions given to other postal workers found guilty of notification 1, 2 and 4, and it did not cross his mind to ensure parity of treatment and nor was he provided with sufficient information to come to an informed conclusion.

<u>Formal conduct meeting George Rogers 31 July 2023</u>

67. The formal conduct meeting took place on the 31 July 2023 before Jake Nurse, following an invitation that complied with the ACAS Code of Practice sent on the 25 July 2023. The allegations consisted of notification 1 to 4 as recorded above. George Rogers was accompanied by a CWU representative. The minutes taken are undisputed. At the outset the CWU representative raised an issue with Jake Nurse and Chris Nichol being involved in the fact finding; the objection was ignored despite the validity of it and a disciplinary manager acting reasonably would have considered the historical background and Jake Nurse's input at the outset of the process.

68. The meeting took a similar format to all of the other disciplinary hearings, with similar arguments and evidence given. George Rogers confirmed his partner had suggested going to the Swan car park, and he did not "link" parking in the car park "that they were in the pub."

69. On the issue of the social media posts George Rogers described it as a "load of cobblers…when we went to the Carnarvon we only went there for 20 minutes…we were going there for months and nothing was said on social media…" George Rogers did not agree the respondent's brand would be damaged.

Outcome letter George Rogers 9 August 2023

70. Jake Nurse upheld notification 1,3 and 4 and did not uphold notification 2 on the basis that George Rogers had a break of 28 minutes when he was entitled to 40 minutes. This finding shows Jake Nurse's confusion over break times given all the claimants took less time at the Swan car park than their break allocation legitimately allowed.

71. With reference to notification 1 Jake Nurse found George Rogers had admitted he and colleagues had been going to the Caernarvon "for months but were not going to the Swan car park" which was not on his delivery or a registered toilet stop on his delivery, despite being told not to do so. The same observation made in respect of Robert Stewart and Paul Martin was repeated; "even if I were to accept is version of events in that he did not know about the Swan car park, common sense should have prevailed when he saw the other Royal Mail vehicles parked in the car park and he should have linked the two situations or as a minimum sought clarity from his manager." Jake Nurse was satisfied that a lack of common sense was sufficient to justify a summary dismissal when there was nothing in writing and no historical background of postal workers consulting with managers as to when and how they took their breaks pending an agreement on this issue being reached for the Prenton office. A disciplinary officer acting within the bands of reasonable responses would not have reached such a conclusion in the specific circumstances of this case.

72. With reference to notification 3 Jake Nurse did not accept George Rogers' explanation that he wasn't aware that other employees were going to McDonalds to discuss the case, concluding "there were 5 other employees at McDonalds and 1 who is currently on long term sick leave. I find it difficult to believe that the employee on sick wouldn't have been curious as to why they were all thee rather than at work…I do not accept that he or any of the other employees did not discuss the case or what had just happened…one of the employees contacted the CWU representative from within McDonalds which further supports that Mr Rogers is not being truthful…I find it unlikely that football would be at the forefront of their minds just after being suspended from work." Jake Nurse was entitled to reach this conclusion and so I find.

73. With reference to notification 4 Jake Nurse lay the blame for the social media posts on George Rogers and his colleagues parked at the Swan car park despite the posts being about the Caernarvon Castle which historically had been visited by numerous unnamed postal workers in the recent past. Jake Nurse was "really" concerned about George Rogers' reference to two members of the public "talking cobblers" in their media posts because it shows "a clear disregard for the people who use our services." As in the other cases Jake Nurse concluded that after 44 years of service George Rogers "would have felt ashamed or concerned about the social medial posts but this could not be further from the truth…I am deeply concerned about his lack of remorse that members of the public had this opinion about the Royal Mail." I found Jake Nurse, when reaching this conclusion, did not take into account the wider picture including the fact that George Roberts was a long

term employee who had 44 years complying with the respondent's business standards and there was no evidence that he had ever disregarded the client during that period. Jake Nurse had not properly considered the effect of such a lengthy continuity of employment on conduct and credibility concluding glibly that George Rogers had become "complacent" without properly considering whether an employee, let alone one of 44 years standing, can be held liable for social media posts made when he was legitimately meeting colleagues at the Carnarvon public house for breaks with the knowledge of line managers, this state of affairs had been ongoing for many months and was considered by all to be custom and practice until instructed to stop going into the Carnarvon Castle by Aaron Bolger.

Formal Conduct Meeting – Robert Stewart 1 August 2023

74. The formal conduct meeting took place on the 1 August 2023 before Jake Nurse, following an invitation that complied with the ACAS Code of Practice sent on the 25 July 2023. The allegations consisted of notification 1 to 4 as recorded above. Robert Stewart was accompanied by a CWU representative. The minutes taken are undisputed. At the outset the CWU representative raised an issue with Jake Nurse and Chris Nichol being involved in the fact finding which was disregarded as recorded above.

75. Robert Stewart confirmed he had been employed for 21/22 years and gave evidence that the Swan public car park was the closest to the office, he had been told that he was not allowed back into the office "for the last few months" and denied that he had been told not to use the Swan car park, which was used by the public. Robert Stewart volunteered that it was his idea, he drove the van and his partner NMK was "happy to go along with it." As in the meeting with Paul Martin a great deal of time was spent on mail volume and delivery.

76. Robert Steward was asked about going to McDonalds and his fact finding meeting held on 28 June 2023 when he confirmed that he had not discussed the case with anyone except for his wife and had not met with colleagues. At the disciplinary hearing Robert Stewart explained he had misunderstood the question and had not lied, they had not discussed the case and "I misunderstood that, I didn't meet to discuss the case with anyone…I was nervous at the time and misunderstood what was said…the only thing I can remember was to get a number for the rep."

Outcome letter 9 August 2023 to Robert Stewart

77. In an outcome letter dated 9 August 2023 Jake Nurse upheld all four notifications and dismissed without notice. The effective date of termination was 11 August 2023. In a decision report he concluded in relation to Notification 1: On 21 June 2023, the claimant failed to follow a reasonable managerial instruction, Jake Nurse found that the Swan car park was not a designated toilet break on Robert Stewart's delivery round, preferring as he had in the earlier disciplinary hearing Chris Nichol's evidence that he made staff aware they should not take breaks at both Caernarvon Castle and Swan car park. Jake Nurse does not mention other witness

evidence on this issue, including that given by James McGovern where no mention was made of this, and nor was James McGovern asked the key question about what was said at the 20 June 2023 meeting. Jake Nurse did not take into account the clear evidence before him that an agreement was yet to be reached on breaks and how they were taken, the fact that no employee was put on notice that going to the Swan car park against a background of the Swan Public house and other public houses being suitable for breaks including toilet breaks could result in dismissal.

78. Jake Nurse did not take into account the fact that neither Aaron Boulger or Chris Nichol's checked with employees to make sure they had a clear understanding of their instructions and whether it included going into one pub – the Caernarvon Castle, as opposed to parking in a public car park adjacent to a pub, and confirming the position in writing for the avoidance of doubt. Jake Nurse did not take into account the possibility that Chris Nichol's recollection of what he had said was incorrect and/or may have been unclear in any way against a background of all postal workers complying with Aaron Boulger's instruction immediately it was given. Finally, there is no satisfactory evidence that Jake Nurse took into account the fact Robert Stewart had a clean employment record of 21 years and apart from the response to the McDonald's question there was no issue with his honesty. A point raised by Robert Steward during the hearing and recorded in his amended notes that "I feel I am always honest, I have been there for 22 years and no one has ever had a problem with me or my integrity"

79. I find as a matter of fact Jake Nurse did not objectively assess the evidence, he was aware from the outset of the allegation dismissal was a possible outcome, and did not look for evidence which could benefit Robert Stewart including the fact that there had been "no honesty or integrity issues in the past" was not taken into account when a disciplinary officer acting reasonably would have given some thought about the long history of Robert Stewart's (and the other claimants) honesty and integrity at work.

80. When dealing with allegations that can result in summary dismissal Jake Nurse's conclusion, identical to that in the case of Paul Martin, fell outside the band of reasonable responses when he concluded; "even if I were to accept is version of events in that he did not know about the Swan car park, common sense should have prevailed when he saw the other Royal Mail vehicles parked in the car park and he should have linked the two situations or as a minimum sought clarity from his manager" did not taken into account the lengthy custom and practice where postal workers had parked in the Swan car park regularly in the past and it was an accepted stop off point on some routes.

81. With reference to Notification 2: On 21 June 2023, the claimant intentionally delayed the mail by leaving was due mail in his frame was not upheld because he had taken a break of 24 minutes as opposed to the 40 minutes he was entitled to, leaving notifications 1,3 and 4 as upheld.

82. With reference to Notification 3: Jake Nurse had sufficient information to conclude that on the 23 June 2023, the claimant was dishonest in stating that he went straight home after Chris Nichol sent him home, but later at 08.13am, he was seen to be in the McDonalds next to the Delivery Office with his work colleagues. Jake Nurse relied on the information provided by a CWU representative in addition to the photograph of Robert Stewart and his colleagues sitting together, the likely reason for his meeting, and his dishonesty when questioned about it, is that he had been discussing confidential matter related to his conduct case, in breach of the conduct standards. Jake Nurse was entitled to reach the view that Robert Stewart had attempted to "mislead" at fact finding stage and it was "too coincidental" for him to accept that Robert Stewart had not met up with anyone at McDonalds to discuss the case.

83. With reference to Notification 4 I repeat my conclusions above; there was no evidence Jake Nurse took into account the fact that the public media posts concerning the Caernarvon public house were outside individual employees control against a background where it was custom and practice for individuals to take legitimate breaks in a number of different venues, including inside the Carnarvon Castle public house. The conclusions reached by Jake Nurse in respect of this allegation reflect his closed mind to the possibility that public medial posts could also be positive as suggested by Robert Stewart, and the two negative comments discussed which do not name individuals, reflect a lack of management accountability and not criticism of individual postal workers who were carrying out their day-to-day usual activities, such as stopping off in the Carnarvon Castle to take breaks in the full knowledge of managers. Confusingly Jake Nurse concluded "Mr Stewart claims that the comments could possibly damage the brand but this is out of his control. I would have to disagree with this as Mr Stewart was aware that managers had given the instruction not to go to the Caernarvon Castle" failing to add that immediately after the one and only instruction was given, postal workers, including Robert Stewart, did not take breaks in the Caernarvon Castle public house again.

84. Jake Nurse's conclusion that the two public social medial posts "paint a negative picture…Mr Stewart does confirm that these posts could be damaging for our company but still chooses to take a break in an area with others which could and has affected the public's perception…it is reasonable to expect that with 22 years of service Mr Stewart would have felt ashamed or concerned about the posts on social media, but this wasn't the case" reflected the lack of objectivity when he considered this issue blaming the postal workers for management decisions. His concern expressed as follows: "I am deeply concerned of his lack of remorse that members of the public had this opinion of Royal Mail" was also unreasonable and did not take into account the wider picture including the fact that Robert Stewart had been an employee who had for almost 22 years complied with the respondent's business standards and had not been criticised over the way he treated or dealt with the public.

85. Jake Nurse concluded Robert Stewart had showed "little remorse" and could no longer be trusted. His belief that the Robert Stewart "tried to mislead a manager in the fact finding interview when asked what he did after being suspended" was genuinely held and based on a fair investigation that fell well within the bands of reasonable responses and so I found.

86. Finally Jake Nurse gave no thought whatsoever to the sanctions given to other postal workers found guilty of notification 1,2 and 4, and it did not cross his mind to ensure parity of treatment.

Formal conduct meeting with Ian Vermiglio on 31 July 2023

87. The formal conduct meeting took place on the 31 August 2023 before Jake Nurse, following an invitation that complied with the ACAS Code of Practice sent on the 25 July 2023. The allegations consisted of notification 1 to 4 as recorded above. Ian Vermiglio was accompanied by a CWU representative. The minutes taken and amendments which followed are undisputed.

88. Ian Vermiglio confirmed he had been employed for 7 years and gave evidence that the Swan public car park was on his route and on the way to the office. He explained "I have no dedicated area to go for a break on that walk" and that he had met with colleagues 3 of 4 times in the Swan pub car park, and had not used the Caernarvon Castle since being told not to do so. He denied, as did the other claimants, that Chris Nichols mentioned the Swan car park. Ian Vermiglio provided a document setting out his toilet stops showing the Swan public house was on the way back to the office, "it's a common road and ideal for toilets…the Swan car park is away from the pub. No comment made to us saying we couldn't…I finished my duty and needed to take my break."

89. With reference to the McDonalds alleged incident Ian Vermiglio was asked "after you were suspended what did you do" and responded "After I spoke to Chris I went to McDonalds. Saw the lads there and said hello. I was there for about 5 minutes." It was incorrectly put to him by Jake Nurse that "in your initial fact finding you initially said you had not gone to McDonalds and then changed your story." Jake Nurse had become confused with the different cases before him and it is apparent that he did not take into account the amendments to the meeting notes. Ian Vermiglio responded "No I didn't say that. I said I did go…In the notes I have when I was precautionary suspended I went to McDonalds for a bite to eat and noticed our colleagues there. I was asked what was discussed and I said I wasn't part of any discussion." He clarified "a workmate was there on his day off and we wouldn't discuss this in front of them."

90. With reference to the fourth allegation Ian Vermiglio regarded the two posts on social media made "weeks prior" as "unfortunate"…we were on a break, we had finished. They don't understand that…In the absence of a clear instruction that's why we took our break here. When Aaron got everyone and told us not to have a break there we didn't. If he had told us not to meet up as a group we wouldn't have had."

91. Ian Vermiglio explained the problems in the Prenton office, which should have been known to Jake Nurse as part of his decision making process but there is no evidence that this was taken into account when looking at the rest breaks and two social media posts. It is undisputed there was a low morale, mental health issues amongst postal workers including a suicide, union concerns over health and safety, poor relationships between staff and line managers against a background of union intervention, changes made to deliveries in Prenton and overburdening postal workers with work, staff being "under pressure. The issue of not receiving mail is a result of the changes. We are the guys on the frontline and one person was even assaulted…and it is all these things are altering the public perception of us. They think all postman do is sit on their backsides."

92. Jake Nurse's perception was that "the posties have broken away to go to the Caernarvon pub away from their delivery routes which have given the public that perception" and he failed to give consideration to Ian Vermiglio's argument that for the postal workers to have accountability "we should have had a proper instruction. The issue was the group as it didn't look good. It should be addressed at that point. We were never told not to. We have a lot of grey areas and no standards… " I have made earlier reference to Jake Nurse approaching these four cases before him with a closed mind in favour of the management position and this is reflected in the terminology he used in the outcome letter; "the posties have broken away to go to the Caernarvon pub" when the reality was that there were no breaking away from any rules as the postal workers (including the four claimants) had met inside the Caernarvon Castle for a substantial period of time, it was recognised to be custom and practice and known to managers at the time.

93. In a document marked "Corrections/amendments to minutes from conduct interview (31.07.03 Chester DO) Ian Vermiglio clarified "there are no designated toilet break locations on 24/25 walks. As a result I utilised the Holm Lane car park as it serves two purpose…an area to stop and each my lunch plus there are two designated toilet options (health centre and Swan public house) if required…I was present at an informal meeting on the 20 June 2023. I will state quite categorically (along with everyone else present) that there was absolutely no reference to 'The Swan'…Since Aaron Bolger's return…noting has been set up to formalise a plan for breaks which would be acceptable to both staff/management." In short, postal workers were authorised to go in to public houses, including The Swan, for breaks and the respondent's managers failed to make the position clear and beyond doubt before (and after) the alleged misconduct on the 21 June 2023.

94. With reference to the social media posts Ian Vermiglio clarified "I don't feel shame at the fact that certain misguided people would have such views…Perhaps if the public were made fully aware of the real reasons for the abysmal service they have been receiving, such comments would not have been posted…it comes down to people not being in receipt of the full facts as to why their mail delivery is in such disarray." Ian Vermiglio stated "**One thing that does stand out is that there is no common policy regarding breaks…across the group…we are all aware of the**

fact that different delivery offices operate differing policies relating to the taking of break and without a clear idea as to what we should be doing, it is inevitable that like those relative to this conduct case will occur…don't forget Jamie McGovern's statement …someone may need to speak to him if any further questions" [my emphasis]. This was not investigated either at dismissal or appeal stage and the respondent's failure to do so, objectively assessed, was outside the band of reasonable responses.

95. Despite the prompt to question James McGovern, Jake Nurse did not raise any questions about his statement and the complete omission in it as to what was said by Chris Nichol on the 20 June 2023, a key issue in this case as Chris Nichol was saying one thing and the claimants together with a number of their colleagues were saying the exact opposite, namely, that no mention had been made of the Swan car park or gatherings of postal workers during their break.

Outcome letter 9 August 2023 to Ian Vermiglio

96. In an outcome letter dated 9 August 2023 Jake Nurse upheld all four notifications and dismissed Ian Vermiglio without notice. The effective date of termination was 11 August 2023. Jake Nurse's decision making process is similar if not identical to his earlier conclusions in respect of the allegations taken individually in respect of other claimants.

97. In a decision report he concluded in relation to Notification 1: On 21 June 2023, the claimant failed to follow a reasonable managerial instruction, Jake Nurse found that the Swan car park was not a designated toilet/rest break on "his delivery" and as the claimant was not the first person to arrive this gave him "the opportunity to decide a more suitable place to have a break."

98. Jake Nurse did not take into account the clear evidence before him that an agreement was yet to be reached on breaks and how they were taken, the fact that no employee was put on notice that going to the Swan car park "against a background of the Swan Public house and other public houses being suitable for breaks including toilet breaks" could result in dismissal. He relied instead on Aaron Bolger confirming "employees were told not to meet up in any location" and "based on the number of employees who met at the car park I believe that some coordination had taken place with other members of staff" concluding Ian Vermiglio had made the decision to go to the Swan car park despite being told not to do so.

99. Jake Nurse did not take into account the fact that neither Aaron Boulger or Chris Nichol's checked with Ian Vermiglio to make sure he had a clear understanding of their instruction and whether it included going into one pub – the Caernarvon Castle, as opposed to parking in a public car park adjacent to a pub, and confirming the position in writing for the avoidance of doubt. Jake Nurse did not take into account the possibility that Chris Nichol's recollection of what he had said was incorrect and/or may have been unclear in any way against a background of all postal workers complying with Aaron Boulger's instruction immediately it was given.

100. There is no satisfactory evidence that Jake Nurse took into account the fact the respondent had no data for the time Ian Vermiglio was at the Swan car park due to the respondent's failure. Lip service was given to the clean employment record and no mention of the commendation from Ian Vermiglio's manager.

101. I find as a matter of fact Jake Nurse did not objectively assess the evidence, he was aware from the outset of the allegations dismissal was a possible outcome, and did not look for evidence which could benefit Ian Vermiglio, including the amended minutes. When dealing with allegations that can result in summary dismissal Jake Nurse's conclusion, identical to that in the case of Paul Martin and the other claimants as recorded above, fell outside the band of reasonable responses; "even if I were to accept is version of events in that he did not know about the Swan car park, common sense should have prevailed when he saw the other Royal Mail vehicles parked in the car park and he should have linked the two situations or as a minimum sought clarity from his manager" did not taken into account the lengthy custom and practice where postal workers had parked in the Swan car park regularly in the past and it was an accepted stop off point on Ian Vermiglio's route .

102. With reference to Notification 3: Jake Nurse had insufficient information to conclude that on the 23 June 2023, the claimant was dishonest in stating that he went straight home after Chris Nichol sent him home when Ian Vermiglio had not said this and made it clear from the outset he had gone to McDonalds.

103. With reference to Notification 4 I repeat the findings of facts and my conclusions above.

<u>The other employees at the Swan Pub car park and disciplinary outcomes</u>

104. Jake Nurse heard the disciplinary against PJ, MMcK and DS. PJ was transferred out of the unit and given a 2 year suspended dismissal, MMcK was given a 1 year serious warning and as DS "showed remorse" he was given a 2 year suspended sentence. ND resigned during the conduct procedure and no penalty given. As recorded above, AO'B was issued with a 2 year serious warning on the basis that he was not off route and only in the car park for 15 minutes, CJ was referred to first line manager because he was not off route, had minimum stops on duty, was in the car park for under 15 minutes, CB was found by Jonathan Crook to have attended one briefing, was not off route, had minimum stops on duty, was in the car park for under 15 minutes, and "it was Carl who wanted to go to the Swan." CB was given no penalty. SW partner to CB, had not attended the briefings and his condition was covered by the Equality Act 2010 was not given any penalty.

105. No separate documents were produced by Jonathan Crook and level 1 line manages showing the decision making process when it came to the investigation into other employees and why it was decided, for example, to issue CB with no

penalty and refer Ian Vermiglio to Jake Nurse given the lack of any evidence to the effect that Ian Vermiglio was in the car park for longer than 15 minutes and had volunteered the information that he had been at McDonalds.

Appeals

106. All four claimants appealed and the appeals were heard by Rebecca Rees, an experienced independent caseworker having heard around 250 appeals. Unlike Jake Nurse, Rebecca Rees was independent and came to the disciplinary process with no knowledge of any of the events that gave rise to the dismissals. The ACAS Code of Practice was complied with. Each claimant was supported by a union representative.

107. In her witness Statement Rebecca Rees refers to ten employees being originally investigated, eight of whom were taken through the formal process, of which six were dismissed (including the claimants). The evidence before me was that there were originally twelve not ten employees investigated, ND resigned during the process which left eleven. Four employees were dismissed, two were given suspended dismissals (with one of those transferred out of the unit), two were given warnings (a one year and two year serious warning respectively), two employees were not issued with any penalty and one employee was referred to first line and the outcome was not referenced in any of the paperwork before Rebecca Rees, who did not address her mind to the possibility that she needed to address parity of punishment for what was essentially the same offence, for example, why would a condition that fell under the Equality At 2010 and/or not attending one or two of the relevant briefings result in no penalty? Rebecca Rees did not ask herself why an employee who attended one briefing only was issued with no penalty and yet employees who had a different understanding as to what had been said at the second briefing were dismissed following an oral instruction which gave room for misunderstanding. Rebecca Rees did not investigate whether postal workers who were not dismissed had a pre-existing conduct record, for example, DS was already on a live serious warning and had attended the Caernarvon Castle during the period covered by the two social media posts and yet notification 4 was not upheld against him and he was not dismissed. An appeal officer behaving reasonably when objectively assessing the evidence would be looking for written corroboration of the instruction and notification that if it was ignored, dismissal for gross misconduct could follow. The failure by Jake Nurse to grapple with the consequences of the respondent's omission to document anything in writing concerning the instructions regarding breaks and how they could be taken pending agreement being reached with the unions, was repeated by Rebecca Rees, who did not put this fundamental unfairness right in addition to other matter set out above.

Appeal outcome: Paul Martin

108. With reference to Paul Martin, Rebecca Rees did not uphold notification 2 intentional delay of the mail, she was however satisfied he had been briefed that "he should not be taking a break at the end of his shift, nor congregating with

staff in pub car parks…" and yet there is no mention of the fact that as at the time of the allegation there was no agreement between the union and respondent concerning when to take breaks and how, and there seemed to be no consideration of the factual matrix against which breaks were taken, for example, the custom and practice of going to the Caernarvon Castle at the end of the shift in the knowledge of managers. Rebecca Rees had before her the email dated 27 July 2023 from Ian Corrin to Stuart Holsgrove and copied to Jake Nurse confirming a meal relief plan was to be "trialled" for 4 weeks from 31 July followed by "a review…with staff feedback." An appeal officer acting within the band of reasonable responses would have questioned whether there was a conflict in Chris Nichol's assertion that he had instructed postal workers how, where and when they could take breaks and the factual situation, when the union and staff were to be involved in a future agreement concerning breaks/meal relief as agreed. A reasonable inquiry would have included asking James McGovern specific questions about this, which was never done.

109. With reference to notification 3, Rebecca Rees was satisfied that the claimant had not told the truth and only when he was shown a photograph did Paul Martin admit he was outside McDonalds with colleagues.

110. With reference to the final notification 4, Rebecca Rees found the remarks made by customers on social media "showed a negative perception from customers due to OPG's congregating at the end of their shift in order to take their breaks…they had been instructed not to continue with these behaviours. These instructions were disregarded…" Rebecca Rees did not taken into account the fact that the social media criticisms related to meeting in Caernarvon Castle before the instructions was given and complied with not to go into the Caernarvon Castle again. Rebecca Rees did not take into account that managers were aware of the custom and practice and did nothing to stop it until the 12 June 2023 huddle with Aaron Bolger.

111. Rebecca Rees was aware of Paul Martin's length of service and clean conduct record, and she did not find him remorseful, concluding dismissal was the appropriate penalty in all of the circumstances. Rebecca Rees did not put right the shortcomings of the disciplinary hearing and outcome, despite taking witness statements from PE, SM, and SC who confirmed Aran Bolger instructions, and yet did not seek further information from James McGovern, who was best placed to clarify what had actually been said to the employees by Chris Nichol on the 20 June 2023. Rebecca Rees did not pick up on the fact that James McGovern was silent about what was said by Chris Nichol and whether he had expressly referred to the Swan car park, and she gave no thought to his evidence that "local discussions are the key as these will shape the final break agreement" and it was common knowledge that they were yet to be agreed. An appeal officer acting reasonably would not have set such store on remorse given the factual matrix of this case.

112. Rebecca Rees interviewed Jonathan Crook on the 20 September 2023 who provided a statement confirming the following which reflected the part played by

Jake Nurse early on in the process, and yet she failed to scrutinise Mr Nurse's decision making process despite the apparent lack of objectivity:

112.1 He had raised the Swan car park with Jake Nurse "we knew we had a few issues in Prenton…**I believe Jake picked it up with Ian Corrin and area safety rep, Jamie McGovern**…"[my emphasis].

112.2 When asked "were you aware this was in contravention of Aaron Bolger's instruction on 12/6/23 Jonathan Crook responded "**I don't think I was at the time**, I think it was only later when I was doing fact finding meetings…[name blanked out] had no stops on his delivery, some of the ones I passed up had stops, and had gone to the Swan longer…{name blanked out] had only gone for 10 minutes, so he had not sat there for his full break. The ones I passed up generally had had a stop, and gone to the Swan and stayed there for a considerable length of time…I would do the fact finding, which was with 11 OPG's…then either pass up or pass them to the unit manager…[name blanked out] after interviewing him I took the decision that he had been led, he was with [name blanked out] so it would not have been passed up, and he was a non-driver…he was on leave for most of the briefings as well…" Rebecca Rees failed to grapple with Jonathan Crook's decision making process, the fact that the claimants had not stopped in the Swan car park for a "considerable amount of time" with no data available for Ian Vermiglio. All had stayed in the Swan car park for less time than their allocated breaks. Rebecca Rees also failed to question why Jonathan Crook, the customer operations manager, was unaware that Aaron Bolger's instruction had been contravened, and clarify when he became aware of the instruction and what it was. Rebecca Rees had the difficult task of building up the factual scenario when managers had not recorded anything in writing or reached agreement with the union, despite employees being at risk of dismissal if they breached the instruction. She also failed to take into account the fact that the respondent's written policies and procedures were silent, and whether this gave rise to a fundamental unfairness both substantive and procedurally. I repeat these observations for all the claimants below.

Robert Stuart's appeal

113. The appeal took place before Rebecca Rees on 31 August 2023 and in respect of notification 1, 3 and 4 she reached the same conclusions identical to those as in the case of Paul Martin, concluding on the issue of penalty, length of service and clear conduct record that he had not showed "remorse…given his lack of accountability for his actions, I doubted whether he would correct his behaviours…Royal Mail needs to have trust…given the nature of the role and the lack of management supervision…" As with the other claimants, Rebecca Rees did not question why Robert Rees should show remorse for something he did not do and was not accountable for, with the exception of notification of the dishonesty allegation.

George Roger's appeal

114. The appeal took place on the 5 September 2023, Rebecca Rees having carried out additional investigation as referenced above, including interviewing Jonathan Crook, Chris Nicols and Aaron Bolger. Photographs were taken of the Swan car park and Google maps reviewed.

115. In contrast to Robert Stuart and Paul Martin, Rebecca Rees found George Roger had not been off his delivery route, however upheld notification 1 in all other respects, together with notification 3 and 4 for the same reasons as the two earlier cases, concluding George Roger's behaviour amounted to gross misconduct. Rebecca Rees took the view that George Rogers was "dishonest during the conduct investigation, failed to follow reasonable instructions knowingly and had been made aware that his actions were damaging customer perception." Rebecca Rees was aware of his 44 years service and clean conduct records concluding "however, he did not show any genuine remorse or sufficient understanding of his wrongdoing…" and dismissed for the same reasons as those relevant to Robert Stuart and Paul Martin.

Ian Vermiglio's appeal

116. This appeal took place 2-days after that of George Roger's appeal, on 7 September 2023. Rebecca Rees relied on the same evidence produced in the earlier appeal hearings sent to Ian Vermigio for comment on 26 September 2023, which he did.

117. In contrast to Robert Stuart and Paul Martin, Rebecca Rees found as in the case of George Rogers, Ian Vermiglio had not been off his delivery route "or was being unproductive during work hours…" Rebecca Rees upheld notification 1 in all other respects. Rebecca Rees did not uphold notification 2, intentional delay to the mail concluding "he had not taken an extended break, due to the fact he also completed overtime."

118. With reference to notification 3 Rebecca Rees took the view that Ian Vermiglio had been "dishonest in his fact finding meeting. Whilst he did admit he had been to McDonalds he did not say he had spoken to colleagues whilst he was there. He then changed this in his formal conduct interview and accepted that he had in fact spoken to colleagues whilst there. He only changed his version of events after being provided with photographic evidence. I believe that they did discuss the conduct cases and that this was a breach of confidentiality." In arriving at this finding Rebecca Rees concluded that Ian Vermiglio admission that he was at MacDonalds but had not discussed "any aspect of this case" with his colleagues who were there at the time, was contradicted at the conduct interview held on 31 July 2023 when he said he "saw the lads there and said hello." Rebecca Rees did not take into account Ian Vermiglio's written amendments to the conduct interview notes; "I said I did visit McDonald's but I was not aware that that any of the other suspended staff were going to be there nor did I discuss anything relating to the conduct case…" In short, he did not deny talking to his colleagues, only that he had not discussed the conduct case.

119. As in the case of all the claimants. Rebecca Rees did not refer to any Policies or Procedures during the appeal hearing and she did not take into account the fact that there is no written provision for employees to maintain confidentiality during a "precautionary suspension" other than the reference in the suspension letter. In the National Conduct Procedure Agreement version 3 August 2015, and 2 January 2028 a "Precautionary suspension" is described as; "not a formal penalty and it does not suggest any prejudgment." In relation to the non-exhaustive list of gross misconduct there is no reference to maintaining confidentiality during a precautionary suspension. Finally, there is no reference to confidentiality when under precautionary suspension in the Contract of Employment which does provide for confidentiality of commercial agreements. Rebecca Rees did not question the basis on which the claimants who allegedly discussed the suspension at McDonalds could be found guilty of gross misconduct given the lack of any forewarning that such a discussion could amount to misconduct that may result in dismissal. Rebecca Rees did not question the effect of the information set out in the 23 June 2023 precautionary suspension letters that were scanty in the information provided concerning "absences from point of duty where you met with colleagues in the Swan car park…" with no indication that if the allegations were discussed employees could be dismissed. Rebecca Rees gave no thought as to the contradiction in the respondent's Policy that a precautionary suspension does not suggest any prejudgment and the respondent's belief that the employees meeting to discuss the allegations could be fabricating a response, and how this may undermine the right of employees to arrange joint union representation and gather up information to prepare their defence, which was the case at McDonalds evidenced by the photograph of a mobile phone in the middle of the table used to make contact with the union.

120. Finally, with reference to notification 4, as in the case of the other claimants, this was an expansion of notification 1 despite the social media complaints being concerned with the Caernarvon Castle pub only. Rebecca Rees was aware of the service and clean conduct records and concluded using the exact same wording as before "however, he did not show any genuine remorse or sufficient understanding of his wrongdoing…" and dismissed Ian Vermiglio for the same reasons as those relevant to Robert Stuart, George Rogers and Paul Martin. An appeal officer acting reasonably would have taken into account the factual matrix and questioned the extent of the remorse which should be shown by postal workers given the custom and practice and part played by managers against a backdrop of the respondent attempting to improve the service it was providing and public perception following adverse publicity that had no link whatsoever with the claimants.

Law

121. The legal principles are largely undisputed between the parties and I have not recorded all of the case law I was taken to and taken into account.

122. Section 94(1) of the Employment Rights Act 1996 ("the 1996 Act") provides that an employee has the right not to be unfairly dismissed by her employer. Section 98(1) of the 1996 Act provides that in determining whether the dismissal is fair or unfair, it is for the employer to show the reasons for the dismissal, and that it is a reason falling within section 98 (2) of the 1996 Act. Section 98(2) includes conduct of the employee as being a potentially fair reason for dismissal.

123. Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal if fair or unfair (having regard to the reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the employer acted unreasonable or reasonably in treating it as a sufficient reason, and this shall be determined in accordance with equity and the substantial merits of the case. It is recognised in this case the respondent had substantial administrative resources including access to independent higher level managers outside the Prenton office.

124. Where the reason for dismissal is based upon the employee's conduct, the employer must show that this conduct was the reason for dismissal. For a dismissal to be procedurally fair in a case where the alleged reason for dismissal is misconduct, Lord Bridge in **Polkey –v- A E Dayton Services Limited** [1981] ICR (142) HL said that the procedural steps necessary in the great majority of cases of misconduct is a full investigation of the conduct and a fair hearing to hear what the employee has to say in explanation or mitigation. It is the employer who must show that misconduct was the reason for the dismissal, and must establish a genuine belief based upon reasonable grounds after a reasonable investigation that the employee was guilty of misconduct – **British Home Stores Ltd v Birchell** [1980] CA affirmed in **Post Office v Foley** [2000] ICR 1283 and **J Sainsbury v Hitt** [2003] C111. In short, the Tribunal is required to conduct an objective assessment of the entire dismissal process, including the investigation, without substituting itself for the employer, which I have carried out in this case, satisfied that the legal principles were not met at investigation, disciplinary hearing and appeal stage.

125. The Court of Appeal in **British Leyland (UK) Ltd v Swift** [1981] IRLR 91 set out the correct approach: "If no reasonable employer would have dismissed him then the dismissal was fair. But is a reasonable employer might reasonably have dismissed him, then the dismissal was fair…in all these cases there is a band of reasonableness, within which one employer might reasonably take one view and another reasonably take a different view. I find in the case of these four claimants the dismissal fell outside the band of reasonableness for a number of reasons, as recorded in the findings of facts and the conclusion below.

126. In between extreme cases of misconduct there will be cases where there is room for reasonable disagreement amongst reasonable employers as to whether dismissal for the misconduct is a reasonable or unreasonable response: LJ Mummery in **HSBC Bank Plc v Madden** [2000] ICT 1283.

127. In **Boys and Girls Welfare Society v McDonald** [1996] IRLR 129, the EAT clarified that there is a neutral burden of proof when it comes to establishing whether the *Burchell* test has been satisfied.

128. The range of reasonable responses test applies both to the decision to dismiss and to the investigation **Sainsbury's v Hitt** (above). This means that the tribunal has to decide whether the investigation was reasonable, **not whether it would have investigated things differently** [my emphasis].

129. It is irrelevant whether or not the tribunal would have dismissed the employee if it had been in the employer's shoes: the tribunal must not substitute its view for that of the employer: **Foley** and **Madden** (above). This principle has been in my mind throughout the case, and was particularly relevant when it came to notification 3 dishonesty during the fact finding meeting and evidence given on behalf the respondent that the act of lying about McDonalds raised a question over whether the claimants could be trusted to carry out their duties of delivering the mail which required trust and confidence in them. I resolved this issue by referring to the undisputed clean records where there was no question of any dishonesty over many years of service, which was not properly taken into account at disciplinary and appeal stage.

130. The question for the Tribunal is the reasonableness of the decision to dismiss in the circumstances of the case, having regard to equity and the substantial merits of the case. The Tribunal will not substitute its own view for that of the respondent. In order for the dismissal to be fair, all that is required is that it falls within the band of reasonable responses open to employer. It is necessary to apply the objective standards of the reasonable employer – the "band of reasonable responses" test – to all aspects of the question of whether the employee had been fairly dismissed, including whether the dismissal of an employee was reasonable in all the circumstances of the case.

131. The test remains whether the dismissal was within the range of reasonable responses and whether a fair procedure was followed. Section 98 (4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal if fair or unfair (having regard to the reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the employer acted unreasonable or reasonably in treating it as a sufficient reason, and this shall be determined in accordance with equity and the substantial merits of the case.

<u>Conclusion: applying the facts to the legal principles.</u>

132. This has been a difficult case to decide given the number of employees who met in McDonalds and denied doing so until photographic evidence was produced. The fourth claimant admitted to talking to colleagues in McDonalds and there is an issue as to whether he discussed the disciplinary allegation or not. Whilst investigating every argument and line of defence is unnecessary for a fair dismissal

to be established, there is a weakness in the investigation carried out in that whist the prima facie case against the first, second and third claimant was strong in relation to notification 3 dishonesty allegation, it fell short of reasonableness when it came to the fourth claimant whose evidence was that after he made a purchase in MacDonalds he spoke with his colleagues for five minutes or so. It also fell short of reasonableness when it came to notification 1 and 4, where avenues of investigation were completely disregarded as recorded above. The first, second and third claimants had spent all or most of their working life with the respondent and in respect of notification 1 and 4 the strength of the case was weak and required a thorough investigation bearing in mind that the strength of the case against them was prima facie weak and the consequences serious. The evidence against the fourth claimant was either incomplete or non-existent. Contrary to the respondent's position that the claimants were "caught in the act" when they parked up at the Swan car park, the inquiry into what was said to them and the historical custom and practice, was deficient, did not fall into the band of reasonable responses and there was more to do.

133. We also have the difference in treatment with other colleagues who were seen at the Swan car park and in some cases, no disciplinary action was taken for reasons that were less than clear. Throughout my deliberations I have in the forefront of my mind the requirement that I cannot substitute my decision for that of the respondent's. I do not intend to deal with all of the individual submissions made by Mr Jangra and Mr Chaudhry for which I am grateful, and have concentrated on applying the facts found above with the legal principles referenced by them in mind.

134. With reference to the first issue, namely, what was the reason or principal reason for the claimants' dismissal, I found it was conduct, a potentially fair reason under (s.98(1), (2) ERA 1996. The Claimants argue that the reason for their dismissal was not conduct but due to the Respondents concerns about the public perception of the Claimant's gathering to take their rest breaks when they were facing concerns from the public about the quality of its service. I did not agree that this was the only reason for dismissal. Jake Nurse did take public perception into account and had this been the only reason the dismissal would not have fallen within the band of reasonable responses. Jake Nurse also genuinely believed the claimants had failed to follow the reasonable managerial instruction given by Aaron Bolger in an informal huddle on 12 June 2023 and Chris Nichol at a health and safety meeting held with James McGovern on the 20 June 2023. Jake Nurse genuinely believed the claimants had not told the truth about meeting with other colleagues at McDonalds on the 21 June 2023 preferring the evidence given by management in comparison to the claimants and some of their colleagues who attended the meetings. Finally, Jake Nurse genuinely believed the behaviour of the claimants and their colleagues who attended the Caernarvon Castel public house and Swan car park on 21 June 2023 resulted in negative comments on social media. Mr Chaudry submitted "for the purposes of establishing the reason for dismissal, the employer only needs to have a genuine belief in the employee's misconduct; the belief does not have to be correct or justified, and referred to the EAT decision in **Farrant v Woodroffe School**

UKEAT/1117/96, the reason for dismissal was misconduct where the employer has "a genuine, if mistaken, belief that the employee was guilty of gross misconduct."

135. Mr Jangra confirmed it is accepted that the respondent need not prove that claimants committed the allegations, and it need only an honest belief the claimant had done, based on a reasonable ground, after a reasonable investigation. For the reasons set out below, whilst I accept Jake Nurse held a honest belief, I did not find that it was based on reasonable ground after reasonable investigation in a number of respects, with the exception of notification 3 relating to dishonesty in relation to the first, second and third claimant.

136. With reference to the second issue, namely, did the respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged misconduct as a sufficient reason for the claimants' dismissal, I found it did not in respect of notification 1 (meeting in the Swann car park), notification 2 (intentionally delaying the mail), notification 3 (in respect of the fourth claimant who volunteered information about meeting in McDonalds) and notification 4 (negative public medial posts). I accepted the validity of Mr Chaudry's submission that where there is more than one conduct-related reason for dismissal the question for a Tribunal will be whether the conduct in its totality amounted to a sufficient reason for dismissal, not whether the individual acts of misconduct individually, or cumulatively, amounted to gross misconduct: **Governing Body of Beardwood Humanities College v Ham UKEAT/0379/13)**. The EAT established the tribunal ought to have been the nature and quality of the claimant's conduct in total and the impact of that conduct on the sustainability of the employment relationship.

137. In order to make sense of this case I have considered the allegations as per the individual notifications 1 to 4, the effect of the appeal if any, and then the conduct in its totality in relation to each individual claimant.

138. In particular, on the balance of probabilities I found there were no reasonable grounds for Jake Nurse's belief that the claimants had carried out the misconduct alleged in notification 1 against the factual matrix of this case, including the following:

138.1 A confusion as to what was said by Chris Nichol on the 20 June 2023 which Jake Nurse resolved by supporting Chris Nichol's version of events without asking a key witness who was likely to be objective, James McGovern, about what he could recall about the words used by Chris Nichol and whether the Swan car park was mentioned in addition to the Caernarvon Caste car park. Jake Nurse was involved on the 21 June 2023 when Chris Nichol raised his concerns about employees parked in the Swan car park. Jake Nurse did not seek to investigate whether the recollection of Chris Nichol as to what he had said on the 20 June 2023 could be relied on, preferring to accept his evidence against a backdrop of two complaints made on social media about postal workers meeting in the Caernarvon castle public house before the managerial instruction was given by Aaron Bolger on the 12 June 2023 and complied with immediately.

138.2 Jake Nurse did not properly investigate or objectively take into account the historical background of postal workers meeting outside the office after their shift, including in the Caernarvon Castle, with the knowledge and approval of managers. Jake Nurse has totally disregarded the part played by managers who were either offering to meet employees at the Caernarvon Castle or turning a blind eye to the fact that meeting in the Carnarvon Castle was custom and practice to such an extent that cake and hot drinks were made available to employees, and this was brought to an end when Aaron Bolger made it clear that the Caernarvon Castle was out of bounds. Jake Nurse did not factor into his thought process that immediately the instruction was given the claimants and colleagues no longer frequented the Caernarvon Castle public house and the reasonable management instruction was adhered to.

138.3 Jake Nurse did investigate the position concerning the fact that no agreement had been reached between management, the union and employees about the taking of breaks until in or around the 27 July 2023 when a meal relief plan was agreed. It is notable that the agreed meal relief plan was the respondent's opportunity to make the position very clear, and yet there was no reference to employees being instructed not to congregate, there was no limitation on where breaks could be taken and importantly, it remained the case that congregating in a public area during breaks times could result in dismissal was not set out in writing, and the policies and procedures continued to remain silent on what appears to be an act of gross misconduct according to the allegations brought against the claimants. The lack of any written confirmation of the rule goes to the heart of fairness. Policies and Procedures should be clear in their effect, and whilst the respondent's list of possible gross misconduct behaviour is none-exhaustive, there is no suggestion that congregating in public during allocated breaks could fall under the definition, and if an employee is instructed not to congregate he or she could face summary dismissal.

138.4 A dismissing officer acting fairly within the band of reasonable responses would have taken the lack of any written policy and procedure on congregating in a public place (including inside public house and outside in a car park used by the public) into account, concluding that at the very minimum Aaron Bolger and Chris Nichol should have confirmed the new rule in writing given they were deviating from an accepted and recognised custom and practice for which a breach could result in summary dismissal. Chris Nichol is clearly capable of confirming the position, evidence by his email to other managers (and not to all employees including postal workers who were affected) on 26 June 2023 after the public complaint on social media and the gathering in the Swan car park. The wording of that email is key in that Chris Nichol made reference to "I reiterated to staff, who I am aware have been told on previous occasions that it is not acceptable to be meeting for a communal break at any location…" Jake Nurse did not consider whether Chris Nichol's reference to the history of postal workers gathering was reliable. He did not question the plural reference to employees being told on "previous occasions" when the reality is that the first time employees were instructed not to meet up in the Caernarvon Castel was in a "huddle" on 21 June 2023. Jake Nurse ignored the part played by managers

when a dismissing officer acting reasonably would have taken into account the historical background including the lack of any clear instruction with regard to whether meeting in the Swan car park was going against the "spirit" of meeting inside the Caernarvon Castel public House.

138.5 Jake Nurse did not properly consider the other employees who were at Swan Car park and dealt with at a lower management level who did not have authority to dismiss. In other words, he made little effort to discover why other employees had been treated less leniently. Without having the relevant information before him, which he did not, Jake Nurse could not satisfy himself why Jonathan Crook, the investigating manager, decided to refer 3 of out the 12 postal workers to their front line managers, and why those managers, such as Stuart Holsgrove, found AO'B who had over 15 years' service, guilty and issued him with a 2 year serious warning and yet the fourth claimant was dismissed without any data against his name showing how long he had parked up in the Swan car park. Mr Chaudhry submitted that three drivers who were also at the Swan returned to work, and this was "consistent with the respondent's conduct code and the rationale for the decisions were clearly visible, fair and was examined by Mrs Rees". I disagreed that the decisions made by Jonathan Crook were visible, fair and capable of examination. An investigation manager acting within the band of reasonable responses would not have referred cases to different decision makers, effectively pre-empting the decision whether they could be dismissed or not. The respondent's position is that each of the allegations are serious, and as a consequence, an independent disciplinary officer (Jake Nurse was not independent) could have made decisions in relation to those employees at the Swan car park which gave rise to notification 1, 2 and 4 taking all the evidence into account and in the round ensuring parity between employees. Instead, we have different decision makers making different decisions for different reasons ranging from disability status through to showing remorse and recognition that they had done wrong, which the claimants did not show, although it may be the case that one claimant may fall under section 6 of the equality Act 2010 with knowledge of this being given at appeal stage.

138.6 A dismissing officer acting reasonably would have taken into account that (a) not one of the employees at the Swan car park understood that their presence their would lead to dismissal, and (b) employees were not dismissed for the same offences or in some cases not disciplined following a suspension and investigation, exploring whether the employees were "truly in parallel circumstances" and critically looking at the reasons why employees were treated differently bearing in mind that employees with long-term employment and clean records were dismissed when others were not, for example, if they admitted the offence and apologised and/or fell under the Equality Act 2010. There was no attempt by Jake Nurse to ascertain if any of the claimants were disabled under section 6 of the Equality Act 2010 and should be showed a similar leniency, and it was not reasonable to take an apology as a sole arbiter of whether an employee was to be facing dismissal/dismissed or not, against the historical background of this case and the confusing arising out of poor management.

138.7 At the time the belief was formed the respondent had not carried out a reasonable investigation taking into account the confusion regarding decision to dismiss a proportion of those employees at the Swan car and issue warnings or take no action against others involved in the same incident. With reference to notification 1, Mr Chaudry submitted that the claimants intentionally defied the instruction given to them by Chris Nichols, a view held by Jake Nurse, and yet the issue of defiance was not investigated.

139. With reference to notification 2, Jake Nurse found Paul Martin had intentionally delayed mail when there was no evidence to support this finding. Had Jake Nurse considered the evidence he could not have reached such a conclusion, given Paul Martin was on his break and could not have intentionally delayed mail as was Ian Vermiglio against whom the respondent produced no data. Jake Nurse did not uphold this allegation against George Rogers who had a break of 28 minutes and Robert Stewart, who had a break of 24 minutes. The anomalies in notification 2 was put right on appeal, however, Jake Nurse's decision making process is indicative of his closed mind and intent, which was to dismiss and levy as much adverse evidence against the postal workers to ensure that outcome. This intent becomes stark when the case of Ian Vermiglio is considered when it comes to notification 3.

140. With reference to notification 3, for the reasons set out in the facts above, Jake Nurse had reasonable grounds for the genuine belief that the first, second and third claimant had not told the truth about the McDonald's meeting. However, a dismissing officer acting reasonably would have put that meeting in context against a background of postal workers "shocked" by the suspension, struggling to understand why meeting in the Swan car park merited a precautionary suspension and until being told to disperse by the union representative, did not appreciate that discussing the situation with colleagues who were also suspended (and one who was not) would result in their dismissal for breaching confidentiality. Jake Nurse had no grounds for concluding the fourth claimant was "dishonest" and he failed to give consideration to Ian Vermiglio's amended notes where he clearly refers to going to McDonalds and speaking with colleagues, although not about the case. A dismissing officer acting reasonably would have taken into account the information set out in the 23 June 2023 suspension letter, and having an open mind he would not have concluded employees were discussing their defence and "colluding" together, rather he would have looked at the factual matrix including the phone in the middle of table used to try and communicate with a union representative for guidance, and the very long unblemished records of the claimants where there was no hint of any dishonesty.

141. The claimants had continuity of employment with a clean record not usually seen in an Employment Tribunal. Paul Martin commenced his employment on the 22 March 2004 until he was summarily dismissed for gross misconduct on the 11 August 2023. Robert Stewart commenced his employment on the 8 April

2002 until he was summarily dismissed for gross misconduct on the 11 August 2023. George Rogers commenced his employment on the 2 April 1979 until he was summarily dismissed for gross misconduct on the 11 August 2023. Ian Vermiglio commenced his employment on the 31 July 2018 until he was summarily dismissed for gross misconduct on the 11 August 2023. A reasonable dismissing officer would have focused on any potential evidence that may exculpate or cast some light on why they acted as they did during when suspended and denied the opportunity of being able to contact colleagues also suspended who are members of the same union against an unblemished employment record with no question of any past dishonest behaviour.

142. Mr Chaudhry submitted that the claimants' dishonesty "affected their credibility" as each had denied meeting up at McDonalds and chose not to change the meeting notes, omitting the fact that Ian Vermiglio did change his and was as a consequence in a different category to his three colleagues. Mr Chaudry did not factor in the employment records and the effect of all four claimants having no issues with dishonesty before and there was no evidence before me that this was taken into account by the respondent when weighing up the effect of the first, second and third claimant's omission to the McDonalds meeting and discussion with a union representative about the next steps to be taken in response to the suspension, which according to the respondent's own written procedure had no reference to employees being unable to talk about the case with colleagues also under suspension, bearing in mind suspension on full pay was a neutral act and not an indication of guilt. I question whether a suspension which prevents employees from making contact and building up their case is a neutral act, however, I as heard no submissions on this can cannot come to any conclusions, other than to note if suspension is not an indication of guilt there appears to be no logical reason why employees cannot voluntarily meet and talk about their suspension.

143. With reference to notification 4, Jake Nurse found all four claimant guilty of behaviour that resulted in negative comments on social media, despite the negative comments (which totalled 2) made in relation to the postal workers sitting in the Caernarvon Castle that had nothing to do with the presence of "seven" vehicles parked outside in the Swan car park, a public car park across the road and opposite the Swan Public House. In essence the way notification 4 is drafted fixed with claimants with complaints made when they were legitimately using the Caernarvon Castle in accordance with custom and practice in the knowledge of managers, and Jake Nurse did not differentiate between meeting in the Caernarvon Castle which gave rise to the complaint and the Swan public house which did not. Jake Nurse did not take into account the individual employees who gave rise to the complaint in the first place and the reason for this is that he did not know who they were, and had no idea who frequented the Caernarvon Castle before the instruction from Aaron Bolger was actioned. A

dismissing officer acting reasonably would not have fixed the claimants with liability for complaints outside their control, generated when they were legitimately taking breaks in the Caernarvon Castle until told not to do so.

144. With reference to the issue, namely, was dismissal a sanction within the range of reasonable responses open to the respondent, I was satisfied on the balance of probabilities that it was not taking into account the factual matrix above including the investigation pre-disciplinary, at the disciplinary and at appeal stage, which fell well outside the band of reasonable responses, not least the part played by Jonathan Crook, Jake Nurse and to a lesser extent, Rebecca Rees., who failing to rigorously test the information before them in the knowledge that long-serving employees with a clean employment record could be and were dismissed bringing an end to a career in the Royal Mail. Rebecca Rees set aside Jake Nurse's finding in respect of notification 2, intentionally delaying the mail, putting right the unreasonable reliance of this allegation with the effect that it was not upheld against any of the claimants. Rebecca Rees also carried out further investigation as recorded in the findings of fact, which was to her credit but still insufficient to make an unfair dismissal fair.

145. Jake Nurse and Rebecca Rees paid lip service to the long continuity of service and clean employment record with no suggestion of any historical dishonestly or untruthful behaviour. Both ignored inquiries that pointed towards innocence, for example, the immediate response by the claimants when told by Aaron Bolger not to visit the Caernarvon Castle, James McGovern's view on what was said by Chris Nichol on the 20 June 2023 and the total lack of any documentation including written policies and procedures relating to breaks and gathering during breaks against a historical background of meeting in public areas such as the Caernarvon Castle during legitimate breaks at the end of a shift. In addition, the claimants had been denied the opportunity of being able to contact potentially relevant witnesses from the suspension onwards, in the knowledge that they were facing disciplinary proceedings for discussing the case with colleagues who had also been suspended, as in the case of Ian Vermiglio, who did not hide the fact he been at McDonald's and spoken to colleagues when he was there.

146. Given the substantive and procedural failings in this case, dismissing the four claimants for gross misconduct did not fall within the band of reasonable responses in the particular circumstances of this case. The term "gross misconduct" connotes the most serious types of misconduct, such as theft or violence, resulting in summary dismissal. Jake Nurse and Rebecca Rees gave evidence that the dishonesty of the first, second and third claimant in relation to the McDonalds meeting conduct that undermined the relationship of trust and confidence to such an extent that the claimants, for whom honesty was key as they were trusted to deliver the post, could not longer be trusted and remain in

employment. With the exception of the fourth claimant where inconsistency of sanction applied for the alleged misconduct was an issue, no other employee involved in the Swan car park incident had deceived the respondent about a meeting in McDonalds unlike the first, second and third claimant who had.

147. When considering section 98(4)(b) of the ERA and the reasonableness of the dismissals taking into account my finding that other employees had been dealt with more leniently than the claimants, when determining whether the first, second and third claimant's conduct in relation to the notification 3 was sufficient to establish a dismissal that fell within the band of reasonable responses according to the standards of a reasonable employer and whether the dismissal accorded with equity and the substantial merits of the case, I found on the balance of probabilities that it did not for the reasons set out above, not least, the lengthy continuity of employment where there was no question of dishonesty over many years.

148. With reference to notification 1 and 4 the inconsistency of punishment is extensive and goes to the heart of the unreasonable treatment given the widescale leniency against a background of the respondent failing to get to grips with ensuring a fair process took place for all postal workers found at the Swan carpark and the substantial number of postal workers who attended the Caernarvon Castle that resulted in two negative social media posts who were not disciplined. Mr Jangra reminded me the focus must remain on s.98(4). It is submitted that the word "equity" in s.98(4) means that similar conduct should be dealt with in a similar way: **Post Office v Fennell [1981] IRLR 221 (CA).** In arriving at this decision I have taken into account (a) that I should not substitute my view with that of the employer, and (b) there must also be considerable latitude in the way in which an employer deals with particular cases. In respect of (b) an admission and apology result in a lesser punishment short of dismissal in the case of a number of postal workers. However, in the particular circumstances of this case taking an apology into account after an employee had "fallen on his sword" and holding it against the four claimants when failed to show sufficient contrition did not fall within the band of reasonable responses in the particular circumstances of this case detailed above within the factual matrix. In addition, DS was already on a serious warning that appears not to have been taken into account and Jake Nurse had decided her had not gone to the Caernarvon Castle when he had in the time frame the social media posts related to.

149. Turning to the fourth claimant, his submission that the respondent was not consistent in the sanctions applied for the alleged misconduct has even greater force, given the lack of any satisfactory evidence provided by the respondent in relation to notification 3 and I concluded that the decision reached in relation to the fourth claimant at disciplinary and appeal stage was so irrational that it fell well outside the band of reasonable responses. The respondent has attempted to

argue that the four claimants were more to blame for the four allegations than the other postal workers involved, however, the evidence was scant and confusing, for example, in relation to sanctions brought against non-drivers, confusing notification 1 with notification 4 and the respondent's perceived damage to reputation by the behaviour of the four claimant but not the other employees visiting public houses and public car parks. The evidence deduced in relation to the consistency of sanction argument was not reliable, with the exception of the aggravating factor of dishonesty in relation to the first, second and third claimant.

150. With reference to the issue, namely, did the respondent follow a fair procedure, for the reasons set out above I accept submissions put forward by Mr Jangra that the investigation and disciplinary meeting was not conducted by an independent manager due Jake Nurse having been involved at the outset. I do not accept that a dismissing officer involved in fact-finding, for example, during the disciplinary procedure, will invariably result in a finding of unfairness. In the claimants case I found Jake Nurse was not open minded and had decided early on the claimants would be dismissed for all 4 notifications even when it was clear that the evidence showed contrary, for example, the allegations set out in notification 2 had no factual basis whatsoever.

151. The Claimants submit that their mitigation (length of service and clean disciplinary record) was not adequately considered, and for the reasons set out above, the facts revealed that this was indeed the case. It is not sufficient for the respondent to pay lip service to length of service and a clean disciplinary record by adding a few words to the outcome letter, failing to scrutinise what it means to have a long record of many years' service when it comes to a one off incident of dishonesty in relation to notification 3 and whether there could have been some confusion when answering the question by employees whose honesty has never been in question.

152. Finally, the claimants submit that the decision to terminate their employment was already made by the respondent prior to any disciplinary meeting taking place and I have touched upon this already having found on the balance of probabilities that Jonathan Crook had set up the dismissals by referring the claimants to Jake Nurse (and not other employees), Jake Nurse failing to deal with the allegations objectively and deciding the claimants were guilty of all four allegations, including notification 2 which could not have been found to amount to an act of misconduct by a dismissing officer acting reasonably. Notification 2 was put right on appeal, however, the other acts of unreasonableness were not. Mr Jangra referred to the case of **Brito-Babapulle v Ealing Hospital NHS Trust** [2014] EWCA Civ 1626 the EAT held that there may be mitigating factors which suggest that dismissal is not in fact a reasonable response, which can include whether the employee has a long unblemished record. In the Conduct Appeal

Decision Document reference was made to long service and clear conduct records and yet no lesser penalty was realistically considered given the factual matrix.

153. With reference to the issue, namely, if the dismissal is found to be procedurally unfair, would the claimants have been fairly dismissed in any event had a fair procedure been followed, I found that they would not have been fairly dismissed in any event given the procedural and substantive unfairness that went to the heart of this case, and based on the evidence before me, I am unable to envisage a scenario when the respondent could have dismissed fairly, particularly the fourth claimant. Even taking into account the guilt of the first, second and third claimant in relation to notification 3, the evidence concerning whether the claimants could have been fairly dismissed is so unreliable that I am unable to sufficiently confidently predict that the first, second and third claimant would have been fairly dismissed had the respondent properly taken into account the many years of honest service. In short, there is insufficient evidence to conclude on the balance of probabilities that there was a realistic chance of each of the four claimants being fairly dismissed as the respondent has not demonstrated the claimants were guilty of all four allegations (notifications) and it had reasonable grounds for concluding they were guilty of gross misconduct.

154. Finally, with reference to issue 4(b) which I have taken out of order, namely, did the claimants contribute to their dismissal through their conduct, I found that the first, second and third claimant did in relation to notification 3 dishonesty and the fourth claimant did not. The respondent confirmed through Rebecca Rees's evidence that notification 1 and 4 amounted to gross misconduct and notification 3 to misconduct.

155. A reduction on the ground of the employee's conduct must be made where 'the tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent' — S.122(2) ERA. It is the conduct of the claimant's individually that should be considered here. Conduct of any other employee or the respondent's managers is not a relevant consideration.

156. Similar considerations (but not identical) apply for reducing the compensatory award under S.123(6) ERA, the conduct of the employee should be 'culpable or blameworthy' — **Nelson v BBC (No.2) 1980 ICR 110, CA**. The EAT in **Langston v Department for Business, Enterprise and Regulatory Reform EAT 0534/09** confirmed that the same criterion applies to deductions from the basic award. In **Steen v ASP Packaging Ltd 2014 ICR 56, EAT**, the EAT, summarising the correct approach under S.122(2), held that it is for the tribunal to:

•identify the conduct which is said to give rise to possible contributory fault
•decide whether that conduct is culpable or blameworthy, and
•decide whether it is just and equitable to reduce the amount of the basic award to any extent.

157. In relation to the approach set out in **Steen** (above) I find the first, second and third claimant culpable and blameworthy for their responses to the question about meeting colleagues after the precautionary suspension, when they changed their story after being shown a photograph and fabricated a thin explanation for the inconsistencies. It is just and equitable to reduce the basic and compensatory award to 25 percent taking into account that this conduct was not wholly responsible for the dismissal. The main planks of the case against the four claimants were allegations/notifications 1, 2 and 4 at disciplinary stage, and 1 and 4 at appeal stage. However, the first, second and third claimant's failure to tell the truth about meeting up in McDonalds gave fuel to the fire when Jake Nurse took the pre-determined view that the claimants were not telling the truth about notification 1, 2 and 4 and failed to take into account he was dealing with long serving employees who had no history of dishonesty.

158. The wording of S.122(2) makes it clear that, unlike deductions from the compensatory award for contributory conduct under S.123(6), it is unnecessary that the employee's conduct should have caused or contributed to the dismissal. However, I am satisfied that the first, second and third claimant was guilty of the misconduct set out in notification 3 and whilst it did not cause the dismissal, it did contribute towards it. I have a broad discretion to reduce the basic award where it is 'just and equitable' to do so, and I am satisfied on the facts of this case that it is just and equitable to reduce the basic award, and in relation to the compensatory award I must reduce it where the claimant's conduct has been shown to have caused or contributed to the dismissal for the purpose of S.123(6). My discretion in relation to the reduction in the compensatory award lies only in the amount of the reduction, which must be 'such proportion as it considers just and equitable' having regard to the finding that the employee caused or contributed to his or her dismissal.

159. The conduct of the first, second and third claimant was culpable and blameworthy in the sense that it was foolish, perverse or unreasonable in the circumstances - **Nelson** above. In **Hollier v Plysu Ltd [1983] IRLR 260, EAT**, the EAT suggested that the contribution should be assessed broadly and should generally fall within the following categories: wholly to blame (100 per cent); largely to blame (75 per cent); employer and employee equally to blame (50 per cent); slightly to blame (25 per cent). Taking the first, second and third claimant's actions individually, their conduct was foolish, perverse and unreasonable and it is just and equitable in all the circumstances to reduce the basic and compensatory award by 25 percent, for the poor decisions made upon being

questioned about meeting after suspension until shown irrefutable evidence by way of a photograph that they had met colleagues at McDonalds.

160. In conclusion, the first, second, third and fourth claimant were unfairly dismissed and their claims of unfair dismissal brought under section 94 and 98 of the Employment Rights act 1996 as amended is well-founded and adjourned to a remedy hearing listed for **27 & 28 February 2025** before Judge Shotter in person at the Liverpool Employment Tribunal. The parties will be sent a separate notice of hearing. It is just and equitable to reduce the basic and compensatory award of the first, second and third claimant by 25 percent under sections 122 and 123 of Employment Rights Act 1996 as amended.

CASE MANAGEMENT ORDERS

The parties are ordered to comply with the following case management orders designed to assist them prepare for the remedy hearing:

1. The claimants will send to the respondent up-to-date schedules of loss incorporating the judgment above in relation to contributory fault and attaching evidence relating to mitigation including signed witness statements from each claimant, no later than **30 December 2024**.

2. The respondent will send to the claimant a counter-schedule of loss and evidence relating to mitigation of loss including a signed witness statement dealing with failure to mitigate (if relevant) no later than **13 January 2025.**

3. The parties will agree a remedy bundle no later than **27 January 2025**, which will be sent to the Tribunal 2-days before the remedy hearing.

4. The parties have a leeway of 7 days by agreement to comply with these case management orders with the exception of para.3 providing the hearing date is unaffected.

5. The parties can write in and suggest any additional agreed case management orders for approval.

_____23.12.24
Employment Judge Shotter

RESERVED JUDGEMENT & REASONS SENT TO THE PARTIES ON

23 December 2024

FOR THE SECRETARY OF THE TRIBUNALS