EMPLOYMENT TRIBUNALS

Claimant: Miss A Dawson

Respondent: Mr C Malpass

Heard at: **Birmingham Employment Tribunal via CVP**
On: **28 May 2021**

Before: **Employment Judge Noons**

Representation
Claimant: Mr Thakerar of Counsel
Respondent: Mr Kohanzad of Counsel

RESERVED JUDGMENT

It is the finding of this Tribunal that:

1. The claimant was unfairly dismissed.

2. The basic award be reduced by 50% for contributory fault.

3. The compensatory award be reduced to 2 weeks' loss on the basis that the claimant would have been fairly dismissed 2 weeks' later.

4. The compensatory award be reduced by 50% for contributory fault.

REASONS

Introduction

1. The claimant, Miss Dawson, was employed by the respondent, Mr Malpass, to care for two of his family members from 20 August 2016 until she was dismissed without notice on 8 January 2019.

2. The claimant claims her dismissal was unfair within section 98 of the Employment Rights Act 1996. The respondent contests this claim, he says that the claimant was fairly dismissed for misconduct in that one of his family members suffered severe burns to their feet whilst in the claimant's care.

3. The claimant was represented by Mr Thakerar, counsel who called sworn evidence from the claimant. The respondent was represented by Mr Kohanzad, counsel, who called sworn evidence from the respondent and Ms J Crutchley. I had an agreed bundle of documents running to 197 pages to which an additional document (care log sheets) was added during the course of the hearing.

4. I have made my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on the balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts. I have not made findings about every matter raised in evidence but only those matters which I found to be relevant to my determination of the issues.

Issues for the Tribunal to Decide

5. The issues were agreed with the parties at the outset of the hearing. The principal reason for the claimant's dismissal was conduct which is a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996.

6. The issue to be determined was, was the dismissal fair or unfair within section 98(4), and, in particular, did the respondent in all respects act within the band of reasonable responses? The claimant stated that the dismissal was unfair because the respondent followed an unfair process, there was no investigation, she was given not opportunity to state her case, she was dismissed without a hearing and was not offered a right of appeal.

7. The Respondent stated that the dismissal was fair because one of the respondent's family members had been severely injured whilst in the claimant's care and that the police had advised the respondent that he could not speak to the claimant before she was charged. Taking this into account the process followed by the respondent was fair in all the circumstances

8. The focus under section 98(4) is on the reasonableness of the respondent's decisions and it is immaterial what decision I would myself have made about the claimant's conduct.

9. If the dismissal is found to be unfair the respondent asserts that the claimant would have been fairly dismissed in any event in accordance with the principles of *Polkey* and that any basic award and compensatory award should be reduced by 100% for contributory fault.

Findings of Fact

10. The claimant was employed as a care coordinator for 2 members of the respondent's family with significant health needs. The Respondent was responsible for management of the individuals' care packages which included employing people to provider personal care on a 24 hour a day basis to his family members. The Respondent does not run a business and the only reason he is the employer of these individuals is because of the way funding is provided for personal care for his family members. The respondent received funding for 8 care workers to provide round the clock care.

11. The claimant started working for the respondent on 20 August 2016. On the evening of 3 December 2018 the claimant was not at work and one of the respondent's family members was being looked after by another care worker, Ms

Crutchley. The family member is prone to kicking out and he kicked a riser with his right foot which led to a slight abrasion on it. He is also non-verbal.

12. In accordance with normal requirements Ms Crutchley wrote the incident up in the care log and noted the slight abrasion to the right foot. When the claimant attended work on the morning of 4 December 2019 Ms Crutchley told the claimant about the injury to the right foot. The claimant says she was told there was an injury to both feet but I prefer Ms Crutchley's evidence in this regard, the contemporaneous log clearly showed that the injury was recorded as to the right foot only and there was no reason why Ms Crutchley would have said both feet were injured, on the other hand the claimant needed to say that she had been told both feet had an injury to explain why she put Sudocrem on both feet. On the balance of probabilities therefore I find that Ms Crutchley told the claimant that there had been an injury to the right foot only.

13. The claimant took over the care of the family member and proceeded to run a bath for him. During this bath the individual sustained significant burns to both feet. The severity of this may not have been apparent to the claimant at the time.

14. After the bath the claimant put Sudocrem on both his feet, she says this was because there were abrasions on both feet because of the incident the night before that she had been told about by Ms Crutchley. However, as set out above I have found that Ms Crutchley did not tell the claimant that the individual had hurt both feet. I find therefore that the claimant applied Sudocrem to both feet because she had a concern about the redness of both his feet.

15. The claimant then proceeded to dress the family member and at approximately 10am Ms Crutchley arrived back at the house and proceeded to take over his care. The claimant provided care and support to the individual's sister throughout the morning meeting up with Ms Crutchley and the induvial at a pub for lunch.

16. They met at the pub approximately 5 hours after the bath and the claimant said to Ms Crutchley that she had noticed the individual's socks were wet. Ms Crutchley was not concerned as it had been raining and it was not uncommon for his socks to get wet due to the way he gets in and out of the car.

17. Once in the pub the claimant insisted on taking off both of the individual's shoes and socks. Ms Crutchley was surprised by the claimant's insistence that his shoes and socks needed to be removed. However, once the shoes and socks were removed it became apparent that both feet were red, blistered and looked very painful.

18. The claimant spoke with the respondent and advised him that his family member was being taken to hospital because he had a blister on his foot which might be a reaction to the Sudocrem she had put on his feet. The respondent was not overly concerned at this stage and asked to be kept updated.

19. The individual was taken to Stafford A & E, the claimant told the medical staff that she had applied Sudocrem to both feet and that it could be a reaction to that. The individual was then transferred, by ambulance, to a specialist burns at Stoke hospital. Ms Crutchley went in the ambulance and the claimant followed along in the individual's car. She spoke again with the respondent and advised that the individual was going to be kept in overnight for observation, at this point the respondent became more concerned as it appeared to him that the issue was more serious than he had originally been led to believe by the claimant. He therefore asked the claimant to keep him updated and to ensure that the care workers were at the hospital to provide support and care and to be the individual's "voice" with the medical staff.

20. The respondent called the hospital on 5 December 2018 and was told by the nursing staff that they were still doing observations and that the family member would not be home that day. Ms Crutchley stayed with the individual overnight at the hospital. The next day 6 December 2018, the claimant came and took over. Another member of staff came and took over the care later. The respondent and the claimant spoke several times on the phone during the course of 6 December 2018.

21. On 6 December 2018 the respondent received a phone call from the burns consultant who told him that the claimant's account of how the injuries had been sustained i.e. the allergic reaction to Sudocrem, was not in line with the injuries which were clearly burns. The consultant said that he had contacted safeguarding and the police because of the nature of the injuries.

22. The respondent was told that the injuries were a severe scolding and that they needed to wait 24 hours more to see if a skin graft would be necessary. The consultant also advised that the claimant had been abusive towards him and his staff and therefore all of the care workers were banned from looking after the individual on the ward. This alarmed the respondent. He then asked if any of care team had photos of the injuries and he received photos from Ms Crutchley showing the severity of the injuries. He also asked Ms Crutchley to return to the hospital to pick up the member of staff who was with the individual as they were no longer allowed to stay on the ward.

23. When Ms Crutchley returned to the ward one of the nurses asked her the claimant's name and said that the claimant had made her cry by being rude and abusive towards her. Ms Crutchley apologised to the nurse.

24. The respondent phoned the claimant at 8.25 pm when she was on her way home from the hospital and advised her that she was being suspended on full pay as the consultant had contacted safeguarding and the police regarding the injuries to his family member's feet.

25. The claimant came away from the phone conversation with the respondent under the impression that all staff were being suspended but this was not in fact the case. The claimant accepted before this tribunal that she did understand that she was being suspended because of the injury sustained to the feet whilst the family member was in her care.

26. The claimant was emailed a letter confirming her suspension dated 10th December 2018. This letter refers to an investigation meeting on 7 December 2018 but in fact no such meeting took place. The letter said that the claimant was *"suspended due to the intervention of social services who upon review of* (individual's) *care needs have uncovered some concerns about the level of care that is being provided by you".* It made clear that *"once the investigation is complete, you will be contacted with details of a further meeting if necessary".*

27. The claimant responded by email dated 13 December 2018 asking for clarification as to whether other members of staff had been suspended as she was not the only staff member to provide care to the individual and if not why not. The respondent did not respond to that email.

28. The claimant accepted in her evidence that, in light of the criminal investigation, it would have been inappropriate for her to return to work to carry on caring for the individual she was alleged to have committed a crime against.

29. During this period the respondent was in contact with DC Faux of the Staffordshire police. DC Faux advised him that the police enquiry would take a few weeks or months but that the respondent could make a decision on the claimant's on-going employment independently. However, by email dated 18 December 2018 DC Faux said the following to the respondent *"please don't interview her or any of the witnesses without speaking to me first".*

30. In light of this email the respondent called DC Faux who told him that he could not speak with the claimant until she had been charged. In his discussions with DC Faux the respondent was also told that there was more than enough evidence to dismiss the claimant. However, the respondent did not see this evidence at the time.

31. The respondent confirmed that he believed he had to follow what the police had told him that is to say that he should not speak to the claimant. The respondent's view was that the police are the *"law of the land"* and therefore he had to do what they said. This meant he believed he was not allowed to speak to the claimant at all about the allegations.

32. Whilst the claimant was on paid suspension the respondent had to pay overtime to other care workers to make sure his family members had the 24 hour care they needed. This exceeded the budget he had for provision of care. The respondent had a contingency fund of a couple of thousand pounds but could not continue to pay the claimant and overtime indefinitely.

33. The respondent wrote to the claimant by way of letter dated 8 January 2019 setting out two allegations. This letter was the first time that the claimant was aware of the full detail of the allegations against her.

34. The allegations were as follows:

    34.1*"Gross neglect. More specifically it is alleged that on 4/12/2018 you scolded (named individual's) feet and did not seek immediate medical advice. By not seeking medical advice he has sustained serious burns to his feet that have resulted in lasting scars and skin damages. If proven I will consider this to be Gross Misconduct".*

    34.2*"Gross misconduct. More specifically it is alleged that on 6/12/2018 you were verbally aggressive to medical staff and Doctor's on Ward 111. Because you were aggressive the medical staff had to make a formal log of this behaviour. This added additional work to the medical staff's time with (named individual) and resulted in written documentation regarding Andrew. If proven I will consider this to be gross misconduct".*

35. The letter went on to say that the respondent had relied on witness statements from Doctors and other staff members but no statements were included with the letter nor were they ever sent to the claimant. The letter concluded:

    35.1*"Given the inconsistency of your story, your behaviour on ward 111 combined with the medical evidence I cannot entrust* (named individual) *to your care. Your actions and neglect have culminated in an irrevocable breakdown in trust and confidence in you.*

    35.2 "*I have no alternative but to dismiss you by way of gross misconduct. Your dismissal will be effective immediately and you will not be entitled to any notice pay…You are entitled to appeal against this decision".*

36. Nowhere in this letter does it tell the claimant that other care workers were prevented from looking after the individual due to her behaviour on the ward.

37. The claimant does not dispute that she was responsible for the care of the family member at the time that he sustained significant injury. The claimant also does not dispute that the burns to his feet were caused by the temperature of the bath water. The respondent made clear today that in light of these facts he could not continue to employ the claimant to look after any of his family members.

38. In his witness evidence the respondent has said that he took into account the following information:

    38.1The hospital and care logs;

    38.2The fact that the claimant had bathed the individual and had applied Sudocrem to both feet despite only the right foot having been injured the day before;

    38.3That the burns consultant had said that there was a red ring at the same height just above the ankles which was consistent with being stood in a shallow bath of hot water;

    38.4The claimant did not seek medical attention for over 5 hours after the bath and after she had applied Sudocrem;

    38.5the claimant had downplayed the severity of the injuries when first speaking with him about it; and

    38.6that she had been abusive toward hospital staff such that the care team had been banned from the ward.

39. The claimant appealed by way of email dated 11 January 2019, she set out 7 grounds of appeal and concluded that *"I therefore feel my dismissal is not only substantively unfair, but also procedurally unfair and as such I am appealing the decision to terminate my employment".*

40. The respondent responded by way of email dated 14 January 2019 acknowledging the appeal and saying that *"once I am in possession of all the information you require, I will be back in touch with you".* Despite this the respondent did not ever get back in touch with the claimant and she was not able to appeal the decision to dismiss her.

41. The claimant was subsequently charged in March 2019 with two criminal offences namely ill treatment of a person who lacks capacity contrary to section 44(1) and (2) of the Mental Capacity Act 2005 and neglect of a person who lacks capacity, contrary to section 44(1) and (2) of the Mental Capacity Act 2005. The CPS, after receipt of an expert report, concluded that there was no longer a realistic prospect of conviction and therefore offered no evidence at the hearing on 14 October 2019. The claimant was found not guilty and was acquitted and discharged from all criminal proceedings.

42. It is relevant to set out briefly the conclusion of the expert report commissioned by the CPS which the respondent received by way of letter dated 9 October 2019. The expert concluded as follows:

    42.1The heat of the water whilst capable of burning the feet was likely close to a heat that some people could find tolerable.

42.2The cold and hot water was not mixed sufficient so there would have been parts of the bath that were too hot, specifically it appears that the claimant ran the cold water first and then hot water second and then applied the bubble bath mixing the water together at this point.

42.3It could not be discounted that she did check the water and checked a bit which appeared to be ok.

42.4It was not a case where she ran a scolding hot bath and not checked the water.

42.5There was no thermometer to check the temperature of the water meaning there was a risk of human error when checking the temperature.

42.6The family member on being taken out of the bath may have been red but other parts of him which were not burnt also appeared to be red and could be seen as a reddening of the skin that simply goes aware after a few hours.

43. The expert therefore concluded that the injuries would not have been readily apparent to the claimant and that even if she had applied cold water immediately this would not have helped with the injuries.

44. The CPS concluded that *"to establish a criminal prosecution the Crown needs to prove to a jury beyond reasonable doubt, so that they are sure, that the* (claimant) *willfully neglected* (the individual), *that is that the neglect was deliberate. Whilst I am satisfied on the evidence it could be shown that the* (claimant) *was potentially negligent by not mixing the water to a sufficient standard the Crown cannot establish that this neglect was deliberate.*

Relevant Law

45. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111 ERA 1996. In this case the respondent admits that it dismissed the claimant (within 95(1)(a) ERA 1996).

46. Section 98 ERA 1996 deals with the fairness of dismissals. There are two stages within section 98. First the respondent must show that it had a potentially fair reason for dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal the tribunal must consider whether the respondent acted fairly or unfairly in dismissing for that reason.

47. In this case it is not in dispute that the respondent dismissed the claimant because he believed she was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under section 98(2). The respondent has satisfied the requirements of section 98(2).

48. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, (having regard to the reason shown by the employer) shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

49. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions of **British Home Stores Ltd v Burchell 1980 ICR 303** and **Post Office v Foley 2000 IRLR 827**. The Tribunal

must decide whether the employer had a genuine belief in the employee's guilt. Then the tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. If the Tribunal is satisfied of the employer's fair conduct of the dismissal in those respects it must then go on to decide whether the dismissal of the claimant was a reasonable response to the misconduct.

50. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4) the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods ltd v Jones 1982 IRLR 439, Sainsbury's Supermarkets ltd v Hitt 2003 IRLR 23** and **London Ambulance Service NHS v Small 2009 IRLR 563**).

51. If the dismissal is unfair the tribunal has to go on to consider whether to make reductions under section 122 and s123 ERA 1996.

52. When considering whether to make a "just and equitable" reduction under S123 (1) ERA 1996 the tribunal must consider whether the unfairly dismissed employee could have been dismissed fairly at a later date or if a proper procedure had been followed. **Polkey v AE Dayton Services Ltd 1988 ICR 142, HL**

53. When considering whether to make a reduction to the basic award on the basis of contributory conduct the issue is whether there was any conduct prior to the claimant's dismissal such that it would be just and equitable to reduce the amount of the basic award to any extent. If there was the tribunal shall reduce the amount accordingly. Section 122(2) ERA1996.

54. When considering whether to make a reduction to any compensatory award if the dismissal was, to any extent, caused or contributed to by any action of the claimant the tribunal shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. Section 123 (6) ERA 1996.

55. Counsel for the claimant and respondent provided me with oral submissions on fairness within section 98 (4) ERA 1996, *Polkey* and contributory fault which I have considered and refer to where necessary in reaching my conclusions. Neither party made any submissions relating to any potential breach of the ACAS code of conduct and I was not asked by Mr Thakerar to make an uplift in relation to any breach.

56. Mr Thakerar on behalf of the claimant directs me to the cases of **Harris (Ipswich) Ltd v Harrison 1978 ICR 1256, EAT** and **A v B EAT 1167/01** and says that the more serious the impact of the decision the higher the duty for the respondent to satisfy itself of the misconduct. The claimant suffered a blight on her career by being dismissed. He submits that the respondent had no reasonable grounds for believing the claimant was guilty of misconduct in that he needed more than just the fact of the injury occurring as the claimant was dismissed for gross misconduct and therefore the respondent has to show that he considered how the injury occurred and that this could have been innocent.

57. He points out that the claimant was not aware that she was at risk of dismissal until she received the letter dismissing her. There was nothing stopping the respondent making clear in the suspension letter that it was potential gross misconduct and what the allegations were. The fact the respondent failed to do so was fatal to a

fair process and that the process and the sanction of dismissal were outside the band of reasonable responses.

58. In relation to contributory fault Mr Thakerar says that the tribunal must determine if the claimant's conduct was blameworthy, the respondent's suspicions that she was aware that the family member had been injured and that she tried to cover it up were not put to her at the time. He says there is no evidence of this but accepts that if I find that she was aware of the injury and did attempt to cover it up then this is blameworthy conduct such that I should reduce the damages awarded to the claimant.

59. Mr Kohanzad on behalf of the respondent points out that conduct is accepted as the potentially fair reason for dismissal and it is not disputed that the respondent had a genuine belief in the claimant's guilt. He says that I must look first and foremost to the wording of section 98(4) and take into account what the police had told the respondent and also the very limited financial resources available to the respondent to fund the care of his family members. He formulates the question under S98(4) as whether it was within the range of reasonable responses for the respondent to do what the police told him. That is to say, was it within the range of reasonable responses for the respondent to not speak to the claimant and to not hold an investigation meeting or disciplinary meeting because the police had told him not to.

60. He distinguishes **Harris** saying that in that case there was no suggestion that the employer had been told by the police they could not speak to the employee.

61. He points out that the claimant accepted it was not appropriate for her to return to work to look after the family member who had suffered injury but he goes further than this and says where the criminal charges being investigated relate to neglect of a care user no reasonable employer would have had the claimant back to work to look after any other care user either.

62. He submits that the respondent was put in an impossible position, he could not have her back at work; he could not afford an indefinite suspension until she was either charged or not and he could not speak with her. He says that it was within the band of reasonable responses for the respondent to investigate without speaking to the claimant.

63. Further if the tribunal accepts the investigation was fair the decision to dismissal was well within the band of reasonable responses as the doctor had told the respondent that the claimant was not truthful when saying she thought it was a reaction to the Sudocrem and that the police had also said she was not being truthful. The care log showed that the injury the night before had only been sustained to the right foot and yet the claimant had applied Sudocrem to both feet leading the respondent to reasonably conclude that the claimant realised she had caused an injury to both feet.

64. If I find the dismissal was unfair Mr Kohanzad says that even if the claimant had attended an investigation and disciplinary meeting and given evidence on her own behalf she would still have been dismissed in any event. She would have said to the respondent, as she did to this tribunal, that she had put Sudocrem on both feet because she was told by Ms Crutchley that the family member had injured both feet the night before. However, the respondent had the care log which showed that in fact the injury was only on the right foot and Ms Crutchley confirmed the same to the respondent. The respondent would therefore have concluded the claimant was not being truthful and would have dismissed her in any event for misconduct.

65. He says that in reconstructing what would have happened had a fair process been followed at best the claimant would have been dismissed for some other substantial reason such as to justify dismissal, loss of trust and confidence. If I find this to be the case then the case of **Hawkes v Ausin UK Group EAT 0070/2018** says it is not unfair to dismiss with no notice in a SOSR dismissal case.

Application of Law to the Facts

66. The respondent was put in an invidious position, he had been told by the police that he could not speak to the claimant, he is a small employer and had very limited financial means. I have taken all this into account but I find that the respondent could have set out that the claimant was at risk of dismissal for gross misconduct before he did in fact dismiss her. The claimant had no notification that her job was at risk until she was dismissed. This was outside of the band of reasonable responses. The respondent also failed to accurately inform the claimant of the allegations in that she was never told that the care staff had been banned from the ward because of her behaviour. Again this failure by the respondent meant his actions were outside the band of reasonable responses.

67. The respondent could have heard the claimant's appeal once she had been charged as the police said he could speak to her once she was charged. The respondent gave no reason why he did not do so. The failure to hold an appeal hearing was also outside of the band of reasonable responses.

68. Given the evidence before him the respondent had a genuine belief in the claimant's guilt. He held this genuine belief on reasonable grounds given the fact that the claimant had applied Sudocrem to both feet despite the care log only recording an injury to the right foot the night before, she had been strangely insistent that both socks be taken off in the pub, she had played down the seriousness of the injury when she first spoke with the respondent, she had told the respondent she thought it was a reaction to the Sudocrem but the burns consultant had been clear that this "story" did not add up and the injuries were consistent with a scalding, that the consultant also barred the care workers from the ward because of the claimant's conduct.

69. As set out above, however the process was not reasonable as the claimant was given no opportunity to put any defence forward to save her job.

70. I therefore find that the dismissal was unfair.

71. Although this is a case where almost no disciplinary process was followed, on the basis that the respondent's family member had come to significant harm whilst the claimant was looking after him, she had put Sudocrem on both feet clearly indicating she realized that both feet were red after the bath, she had played down the seriousness of the injury initially saying it was an allergic reaction and that her actions led to the care team being banned from the ward it is inevitable that even had a fair process been followed and the claimant had been given a chance to put her case forward she would have been fairly dismissed for gross misconduct.

72. The claimant's defence would have been, as it was before this Tribunal, claimant accepts that whilst in her care the respondent's family member came to significant harm but that she had been told both feet had been injured the night before but this would have been rejected by the respondent on the basis it was inconsistent with the care logs and with Ms Crutchley's evidence. I conclude that had the respondent conducted an investigatory

meeting and a disciplinary meeting, including giving the claimant a chance to put her case forward this would have take slightly more time to conclude and would have led to her being dismissed 2 weeks later than she actually was. The claimant would have been dismissed for gross misconduct on 22 January 2019.

73. Moving on to consider whether to make a reduction for contributory fault I have found as a fact that the claimant realized that there had been some sort of injury to both feet because of the bath. I find it highly likely that she did not realise the seriousness of the injury at the time she put Sudocrem on. The reason she was so insistent on removing both socks at the pub was because she was worried that the fluid was somehow related to the injury sustained in the bath. Once she saw the extent of the injuries she tried to cover this up by downplaying the seriousness to the respondent and by telling him and medical staff it might be a reaction to the Sudocrem.

74. She also came across as rude and abusive to the medical staff to such an extent that the team were banned from the ward. This is significant culpable behaviour and I find it just and equitable to reduce the basic award by 50%. Moving on to the consider the compensatory award I find that the claimant's culpable behaviour significantly contributed to her dismissal. I make a reduction of 50% for contributory fault.

75. I was not addressed as to the amount of a week's pay that should be used to calculate the claimant's basic and compensatory awards along with any other elements such as pension loss and loss of statutory rights I am therefore not able to accurately calculate the sums due to the claimant even though there is a schedule of loss in the bundle. I will list this matter for a 2-hour remedy hearing.

76. If the parties reach an agreement as to the amounts due they are to write to inform the tribunal before the scheduled remedy hearing so that judgment can be entered for that amount.

Employment Judge **Noons**
Date 3 August 2021