EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107699/2020

Final Hearing held remotely on 5 - 8 July 2021

Employment Judge A Kemp
Tribunal Member J Burnett
Tribunal Member W Canning

Mr D Hiddleston	**Claimant** **In person**
Highland Country Buses Limited	**Respondent** **Represented by:** **Mr A Hardman** **Advocate** **Instructed by:** **Mr S McLaren** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal is that the Claim does not succeed and is dismissed.

REASONS

Introduction

1. This Final Hearing took place remotely by Cloud Video Platform in accordance with the orders given at the last Preliminary Hearing. It was conducted successfully.

2. The claim is one for automatically unfair dismissal under each of sections 100 and 103A of the Employment Rights Act 1996. The claims made had been identified at the earlier Preliminary Hearing.

Issues

3. At the commencement of the hearing the Judge proposed the following issues, with which the parties agreed –

(i) Did the respondent have a health and safety representative or committee at the place where the claimant worked?

(ii) If so, was it not reasonably practicable for the claimant to raise the matters referred to below by those means?

(iii) Did the claimant bring to the respondent's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety under section 100(1) (c) of the Employment Rights Act 1996?

(iv) If so, was the reason or principal reason for his dismissal that he had done so?

(v) Did the claimant make a qualifying disclosure to the respondent under section 43B of the Employment Rights Act 1996 and in particular did he have a reasonable belief that the information he disclosed tended to show that a relevant offence or failure had occurred and that the disclosure was made in the public interest?

(vi) Was the reason or principal reason for the claimant's dismissal the making of that disclosure under section 103A of the Employment Rights Act 1996?

(vii) If the claimant succeeds in either or both claims to what remedy is he entitled, and in that regard

(a) What losses has he or will he suffer?

(b) Did he contribute to his dismissal?

(c) Should any award be reduced if it is held that the claimant did not make the disclosure in good faith?

(d) Has the claimant mitigated his losses, and

(e) What is the appropriate award for injury to feelings?

4. Before the commencement of the evidence the Judge explained to the claimant, who represented himself and had not conducted a Tribunal hearing before, how that would take place. He explained the need to give all the evidence he wished to on the merits of the claim and on remedy, about cross examination of witnesses on evidence that was challenged, or where they knew or ought to have known of a matter that was relevant, and about re-examination. He explained the need to refer to documents in the Bundle if he wished to rely on them in his own evidence, and to the making of submissions once the evidence had been heard. He further explained that once the evidence had been given it was only in exceptional circumstances that further evidence would be permitted to be given.

The Evidence

5. An Inventory of Productions had been prepared. Documents were added to it during the course of evidence, including one that the claimant had prepared to reference the events and documents in the Inventory as a part of his evidence. The respondent agreed that the claimant could provide that, and adopt it as his evidence, which was duly done. Not all of the documents in the Inventory were spoken to in evidence.

6. It was agreed during initial discussions with the parties that the respondent give its evidence first. The witnesses for the respondent were: James Reid, David Buick, Jack Wright, Gillian Robertson, William Ferguson, Alison McCluskie, and Scott Sherrie. The claimant then gave evidence himself.

The Facts

7. The Tribunal found the following facts, material to the issues, to have been established:

8. The claimant is Mr Douglas Hiddleston.

9. The respondent is Highland Country Buses Limited. It is part of the Stagecoach group of companies. It provides public transport services in the area of the Highland and Islands of Scotland.

10. The claimant was employed by the respondent as a Shift Mechanic from 9 March 2020. He was initially based at their depot in Inverness.

11. The respondent has a disciplinary procedure which includes - "The company will hold an investigation in each case to establish the facts. An interview will be held at which the employee will be given the opportunity to state their case."

12. The respondent has procedures for reporting health and safety concerns to it, including a Speaking Up policy. It had a safety representative in its Kirkwall depot in July 2020, Mr Tom Davies.

13. On 1 July 2020 another employee of the respondent Russell Fraser was sent from the Inverness depot to the Kirkwall depot on the island of Orkney to assist in the maintenance and repair of vehicles there at a depot operated by the respondent in Kirkwall.

14. On 8 July 2020 the claimant was sent to join him in doing so, after remaining in the Inverness depot to carry out work required there. That involved the maintenance of a fleet of buses. The claimant was not given any induction when he arrived. He was not informed who the safety representative at that location was.

15. When the claimant was working in Orkney he worked very long hours for seven days a week. He resided at an hotel. During the period to 15 July 2020 he was asked to repair buses there, including one with a broken gearbox that required to be replaced with the gearbox from another vehicle. He saw broken gearboxes and differentials lying outside the respondent's premises. He saw material damage including a broken prop shaft and a broken gearbox with shards of metal. He and his colleague Mr Fraser thought that the reason for the damage to the gearboxes and differentials was that a type of oil called I-shift oil had been used within the depot for engines and rear axles, which was not sufficiently viscous to

work properly. They considered that a type of oil called hypoid oil was necessary to do so, being much more viscous than that which had been used. They considered that the oil that had been used, being too thin, had not coated the moving parts sufficiently and had leaked past hub seals such as to have the potential to cause damage to braking systems. They found a drum of I-Shift oil on the premises, but could not find hypoid oil.

16. On 15 July 2020 the claimant met Mr Ali Jack, Fleet Engineer of the respondent for the Highlands area, and informed him of his views as set out in the preceding paragraph. Mr Jack was based in Inverness but visited Orkney once a week.

17. On 17 July 2020 Mr Willis and Mr Horwood-Smith, the respondent's Fleet Engineer and Chief Engineer respectively, both based in Inverness, visited the Orkney depot. Mr Willis sent a text to the claimant at 13.28 that day requiring him to be at the depot with his possessions at 3pm. Mr Fraser was not at the respondent's premises at that time. The claimant contacted him. He told the claimant that he had been told by Mr Willis that they required to leave the island. Mr Willis and Mr Horwood-Smith met the claimant and Mr Fraser later that day at the depot. A police vehicle was situated near the depot when they did so. They required that the claimant and Mr Fraser leave the island, stated that they had been challenging management, and said that matters would be investigated in Inverness on the following Wednesday. The claimant was unhappy at being told to do so. He said to Mr Willis on a number of occasions words to the effect of "get back", "don't tell me to hurry up", "back off", "don't look at me", "you disgust me", and "get out of my sight." The claimant and Mr Fraser left the island on the ferry later that day.

18. Both the claimant and Mr Russell were informed on a system called Blink that they had been suspended from employment by message around 6am on 20 July 2020.

19. On 20 July 2020 Mr Alex Willis, the respondent's Fleet Engineer for the Highlands, wrote to the claimant requiring him to attend a disciplinary hearing on 24 July 2020. It referred to two allegations, being the "fraudulent use of clocking cards with intent to defraud company", and

"conduct towards company official on 17th July 2020." No documents were attached to it, and no investigation or investigatory interview with the claimant had been conducted as required by the respondent's disciplinary procedure.

20. On 22 July 2020 Mr Ali Jack the Fleet Engineer (North) of the respondent sent an email to Mr Willis and Mr Horwood-Smith as a "statement of events". It stated that the wrong oil had been used in maintenance work, that it should have been a thicker grade being 85w140, known as hypoid oil, and that that had been ordered on 25 June 2020. He added "To sum it all up, yes the wrong oil has been used, which may or may not have caused damage to some final drive units, however as soon as the error was found action has been taken."

21. On 22 July 2020 the claimant sent an email to Mr Willis complaining about his suspension from employment. He sent another email on 23 July 2020 alleging that he had been told that he had been "challenging management" and that that was why he had been removed from the island. He referred to the wrong engine oil having been used. He sought to have the matter investigated outwith the Highlands and Islands area of the respondent's group. a document in relation to the suspension of the claimant and Mr Fraser.

22. On a date not given in evidence Mr Jack prepared It had appendices to it, one of which was said to be notes from Mr Willis. Those notes referred to a bad atmosphere in the Kirkwall depot after Mr Fraser and the claimant arrived, and that he and Mr Horwood-Smith had gone to investigate that. The notes included the following:

> "I walked over in a calm manner and straight away Hiddleston launched into a tirade of abuse. He is a large man well over six feet tall and proceeded to stand a few feet from me with tools in his hand screaming at me 'I've a good idea to kick your fucking head, go on fuck off you piss me off even being here, fuck off before I fucking do you.' All this and a lot more before I even exchanged a single word with him and due to his extremely aggressive behaviour it was impossible to enter into any form of conversation regarding actions

> going forward. Al the time he was screaming at me he would hold up a clenched fist or at time a tool as if to strike me or intimidate me and make short movements and stop as if about to strike. I was a police constable for five years in a boisterous area and have a lot of experience and training regarding threatening situations but even so I still found myself assessing escape routes and even possible weapons to defend myself from a very large man with heavy tools in his hands threatening me his conduct was that aggressive and uncontrolled."

23. On 27 July 2020 the claimant was sent a letter by Mr Willis to re-schedule the disciplinary meeting for 31 July 2020.

24. On 28 July 2020 the claimant sent to the respondent an email with a formal grievance, which included that he had been told by Mr Kevin Horwood Smith the Head of Maintenance (North) of the respondent that he had received a complaint of the claimant challenging management in Orkney and had said that there would be an investigation. He said that he had not been contacted on that, had been suspended and raised other issues of complaint.

25. That day Mr Willis sent the claimant an email to say that the disciplinary hearing was postponed whilst his grievance was heard.

26. Mr David Buick of the respondent was appointed to investigate the grievance. He did not work in the Highlands division of the respondent, but in Perth. He was sent documents for the grievance by Mr James Reid the respondent's Divisional Traffic Manager for the Highlands. He did not send Mr Buick the formal grievance email of 28 July 2020.

27. The claimant met Mr Buick on 4 August 2020 in the Inverness depot. The claimant explained in detail his concerns as to the wrong engine oil having been used in the Kirkwall depot, which he said had caused damage to the gearboxes, and the circumstances of his removal from the island. He also complained about the procedures that had been followed which led to his suspension. Mr Buick did not have the technical knowledge to address the issue of the oil that had been used, and thought that the grievance was

only about the suspension. He had not seen the letter of grievance dated 28 July 2020. That same day he also interviewed Alex Willis and Kevin Horwood-Smith.

28. On 10 August 2020 Mr Buick issued a letter of decision into the grievance which upheld the grievance in relation to the procedures followed for the suspension and the letter calling the disciplinary hearing. He held that the allegations against the claimant should be independently investigated, and that the claimant remain on paid suspension. He recorded his understanding that the grievance was solely as to procedures followed.

29. On 14 August 2020 Mr Reid wrote to the claimant to confirm that he was suspended pending that investigation.

30. The claimant appealed the decision by Mr Buick on 19 August 2020 on the basis that his grievance with regard to the use of the incorrect oil and the damage that had caused, and in relation to the reason for removal from the island being challenging management, had not been fully addressed.

31. Mr Reid arranged for Mr Jack Wright, Operations Manager for the Moray Division of the respondent based in Elgin, to hear that appeal. He met the claimant on 28 August 2020. The claimant at the appeal explained that he had been told by Mr Horwood-Smith that he had been challenging management, and argued that that had been the reason for his removal from Orkney. He also alleged that there had been a cover-up of the fact that the wrong engine oil had been used, which had caused damage. Mr Wright did not have technical expertise in the issue of the oil and any effect its use may have had. Mr Wright did not understand that the reference to challenging management was what the claimant had intended it to be, and thought that it related to alleged conduct of the claimant himself towards managers when on Orkney. Mr Wright considered that that was an allegation that required to be fully investigated. He set that out in a decision letter dated 30 August 2020. That concluded the grievance procedure.

32. Gillian Robertson, Operations Manager of the respondents in Perth, was appointed by Mr Reid to investigate the allegations. When she informed the claimant of that he argued in an email to her that his grievance had not been fully investigated. She understood from Mr Reid that it had been. She was provided with documentation by Mr Reid but not that in relation to the grievance including the appeal outcome by Mr Wright.

33. She met the claimant on 2 September 2020 in the Inverness depot. She offered him a right to be accompanied which he did not take up. She had been given by Mr Reid on her arrival at Inverness the said documents from Mr Jack and Mr Willis. She prepared a note of that meeting, which is reasonably accurate record of it. The claimant said the following in relation to the incident on 17 July 2020, amongst other comments:

> "AW (Mr Willis) then started smirking at me and telling me to hurry up. I told AW that he had no spine; I had knocked my pan in for 5 months to then have my throat cut. I told AW I wasn't happy with the betrayal. AW looked at me with mad eyes; he was trying to intimidate me and still had his phone in his hand. I was still loading the van and I told him to get out of my sight as he disgusted me. I told him again to get out of my sight and he shot out of the door….."

34. He was asked what he would have done if Mr Willis had not got out of his sight, and replied "Well he would have been goading me". Later in the meeting he was asked if he wished to add anything and alleged that "this has been a management cover up."

35. She received an email from Kevin Horwood-Smith of the respondent on 2 September 2020, with what he termed a brief statement as to the events on 17 July 2020. He said that he had been made aware that there were "some ongoing performance issues" with regard to the claimant and Mr Fraser and that "…..we went with the sole intention of nipping this in the bud, but when we arrived in Orkney we were met with nothing but verbal threats from Douglas and Russell, Douglas in particular threatened Alex on several occasions with "I am going to kick your fucking head in" and "why do you not piss off before I do you in." He said that this was a

"clear breach in company procedure and we just told them to go back to Inverness and meet us on Wednesday to discuss further."

36. Ms Robertson also received a statement from Michael McQuaid, an employee of the respondent in the Kirkwall depot, who alleged that the claimant had made threats against Mr Horwood-Smith and Mr Willis including allegations that the claimant said that "he would attack them with a Stihl saw and they the [sic] had better come 'mob handed' suggesting to me that he was intended to initiate a physical confrontation with them….When the directors arrived both Dougie and Russell began to raise their voices and act in a threatening manner, aggressively throwing tools into the company provided hire van…."

37. On 4 September 2020 Ms Robertson wrote to the claimant to inform him that she had felt it appropriate to forward the minutes to another Manager and for him to be invited to a disciplinary hearing. She attached the statement from Mr McQuaid. She passed the letter, statement, email from Mr Horwood-Smith and minutes of the meeting to Mr Reid.

38. Ms Robertson did not interview Mr Willis, Mr Horwood-Smith, Mr Jack, Mr McQuaid, Mr McVey or Mr Fraser as a part of her investigation.

39. Mr Fraser was later, on a date not given in evidence, investigated by the respondent in respect of allegations of misuse of time cards, but not in respect of the incident on 17 July 2020. Mr Fraser received a final written warning on a date not given in evidence.

40. The claimant emailed Ms Robertson on 6 September 2020 with detailed amendments he proposed to her minute. She did not regard them as being accurate. She had taken notes during the hearing whereas the claimant had not. She passed them to Mr Reid.

41. Mr Reid arranged for Mr William Ferguson, Operations Manager of the respondent, based in their Cumbernauld depot, to hear the disciplinary hearing. Mr Reid passed papers to Mr Ferguson for that, but did not pass him the amendments to the minutes proposed by the claimant, or the documentation concerning the grievance process.

42. Mr Ferguson wrote to the claimant on 7 September 2020 to require him to attend a disciplinary hearing on 9 September 2020 on a charge of "threatening behaviour towards another employee." He attached the statements from Mr Willis, Mr Horwood-Smith and Mr McQuaid.

43. Prior to the meeting the claimant asked Mr Ferguson that he be accompanied by Mr Fraser. Mr Ferguson refused that request, believing that Mr Fraser was involved in the incident.

44. The claimant attended that meeting, which was held in Inverness. He was not represented at it. He asked that Mr Fraser be interviewed as a witness, which Mr Ferguson agreed to do. Mr Ferguson maintained a note of that meeting, which took about one hour forty minutes. The minute is a summary of the main parts of the meeting, but not a fully comprehensive record of all that was said. It included comments made by the claimant as to what happened on 17 July 2020 including that he had said to Mr Willis "Alex get out of my sight, you disgust me" and "You're not getting the reaction you want, you don't have a spine, get out of my sight." He was asked "did you threaten a member of management" and replied "No. Look at the CCTV. I was very annoyed but I did not physically abuse anyone."

45. Following the hearing CCTV footage from 17 July 2020 at the Kirkwall depot was sent to Mr Ferguson, but what he viewed did not show any of the alleged incident. Mr Ferguson spoke to Mr Fraser but he did not agree to give any statement in relation to the matter involving the claimant.

46. On 14 September 2020 Mr Ferguson wrote to the claimant to inform him that he had decided that his conduct constituted gross misconduct and that he be summarily dismissed. The reason the letter gave was "Threatening behaviour towards another employee as documented by 3 witnesses." He informed him of a right of appeal.

47. The claimant appealed that decision by email on 16 September 2020, in which he referred to having advice from ACAS. An appeal was arranged before Ms Alison McCluskie, Operations Director of the respondent for the West of Scotland based in Ayr. An appeal meeting took place on 25 September 2020 at Inverness. A Minute of the same prepared by

Ms McCluskie is a reasonably accurate record of it. The claimant at that meeting referred to the issues he had raised as being ones of health and safety. He repeated the description of events that he had given previously in relation to use of the wrong oil, the damage that that had caused, and that there had been a cover up by local management. During the meeting Ms McCluskie and the claimant viewed parts of CCTV footage made available to her, which did not show the any of the alleged incident. The claimant asked for all CCTV footage to be viewed, believing that some of it may show that incident. The claimant stated that "he felt annoyed and agitated. In fact very annoyed and agitated. He felt that his human rights were breached and decided I'm not taking that". He alleged that the statement from Mr McQuaid was false and had been written by Mr Willis. He referred to there being a management cover up.

48. Ms McCluskie telephoned Mr Jay Anderson the respondent's Operations Manager in Orkney about the CCTV footage. He said that he had personally viewed all available CCTV footage and there was none that showed the alleged incident. She set that out in a written memorandum.

49. On 31 October 2020 Ms McCluskie wrote to the claimant to inform him that she had refused his appeal. She referred to his admissions as to what he had said to Mr Willis at the hearing before her and said "To be on the receiving end of his [sic] type of speech is in itself threatening by its nature." She informed him of a further right of appeal.

50. The claimant exercised that right of appeal, which was heard by Mr David Stewart, who rejected it.

51. The claimant had net pay of £615.15 per week when working for the respondent. He also had pension contributions paid by the respondent. After his dismissal he sought new employment from those with whom he had earlier worked, but found little work primarily in light of the Covid-19 pandemic. He secured occasional work for a day or so at a time totalling about £1,700 in the period to 7 July 2021. He did not receive any state benefits. He continues to seek employment.

52. At no stage did the claimant report his concerns to Mr Davies, or through the channels to do so established by the respondent under its Speak Up policy.

53. Mr Willis, Mr Horwood-Smith and Mr Jack had left the employment of the respondent by the time of the Final Hearing.

Respondent's submission

54. Mr Hardman had helpfully provided a written submission in the late afternoon on 7 July 2021, and spoke further to that on the following day, answering a series of questions asked of him. The following is a basic summary of his arguments:

55. The claimant had not raised an issue of health and safety, but of maintenance. He had raised a health and safety issue only after taking advice from ACAS at the stage of the appeal to Ms McCluskie. He did not have the service to claim unfair dismissal. The evidence from Mr Sherrie should be accepted that the wrong oil issue was one of maintenance not health and safety, as no issues of that were raised in the circumstances of this case. In any event, the reason for dismissal, or principal reason, was the claimant's conduct. He had used words he accepted before both the respondent and this Tribunal. They were ones that were threatening, and the respondent dismissed for that reason. This was not a case that fell within the terms of ***Jhuti*** as no evidence had been manufactured to secure the dismissal. The evidence came from the claimant himself. The letter of dismissal was wrong, the reason had not been the witness statements but the admissions. That was also the appeal decision. Whilst there had been poor procedures followed this case was not one of a cover up or a set up. The claimant had not challenged the documents sent to him in the disciplinary meeting and the conclusion was that the most likely reason for dismissal was solely his threatening behaviour towards Mr Willis. His submission also referred to some of the authorities stated below.

Claimant's submission

56. The following is a basic summary of the oral submission made by the claimant. He had been dismissed for raising a health and safety issue, which was a protected disclosure. He had been dismissed under the guise of conduct issues, which should have been heard outwith the Highlands and Islands. There had always been involvement with and control by Inverness managers. There had not been proper investigations undertaken, and vital evidence had been left out of minutes. The whistle-blowing policy had not been followed by managers. He had told Mr Jack of the health and safety issues he had seen on 15 July 2020 and two days later he was removed and told that he and his colleague had been challenging management. He had not received an induction and not seen the safety representative. He had not had a witness or statement from Mr Fraser, and not the full CCTV. He disagreed with Mr Sherrie's evidence. The issues he raised were ones of health and safety, and it was paramount that brakes were up to high standards. He had given 100% for the respondent and was a key worker.

The law

(i) Health and safety

57. In respect of the claim as to health and safety section 100 of the Employment Rights Act 1996 provides as follows:

> **'100 Health and safety cases**
>
> (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
>
> **.....**
>
> (c) being an employee at a place where—
>
> (i) there was no such representative or safety committee, or
>
> (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

> he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety……..'

58. This section was implemented in order to comply with the Framework Directive on health and safety, Directive 89/391/EEC. It is retained law under the European Union (Withdrawal) Act 2018, and requires to be construed purposively.

59. The terms of the section are wide enough to cover complaints by an employee concerning risks to the health and safety of third parties affected by the employer's undertaking (***Masiak v City Restaurants [1999] IRLR 780***; ***Von Goetz v St George's Healthcare NHS Trust EAT/1395/97***). The circumstances must be communicated to the employer by reasonable means - ***Balfour Kilpatrick Ltd v Acheson [2003] IRLR 683.*** Even if the circumstance referred to is lawful under health and safety law that does not mean that the employee cannot have a reasonable belief that it is still harmful in the circumstances: ***Joao v Jurys Hotel Management UK Ltd UKEAT/0210/11.***

60. The EAT considered the question of what amounts to reasonable grounds for believing that there were circumstances harmful to health and safety in ***Kerr v Nathan's Wastesavers Ltd UKEAT/91/95*** in which it held that the purpose of the legislation is to protect employees who raise matters of health and safety and held that "in considering what is reasonable, care should be taken not to place an onerous duty of enquiry on an employee in a case such as this. The purpose of the legislation is to protect employees who raise matters of safety about which they are concerned; and the fact that the concern might be allayed by further enquiry need not mean that it is not reasonable."

(ii) Public interest disclosure

61. In respect of the claim as to the protected disclosure, generally referred to as whistleblowing, the relevant provisions of the said Act are as follows

‘43A Meaning of “protected disclosure”.

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B Disclosures qualifying for protection.

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

103A Protected disclosures

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for his dismissal is that the employee made a protected disclosure.'

62. The issue of what amounts to a “disclosure of information”, was addressed in ***Kilraine v Wandsworth London Borough Council [2018] ICR 1850***, in which it was confirmed that there was no rigid distinction between information and allegations, and that the full context required to be considered. What was necessary was the disclosure of sufficient information.

63. The words “in the public interest” in s 43B(1) were introduced by amendment with effect from June 2013. In ***Chesterton Global Ltd v Nurmohamed [2018] ICR 731,*** the Court of Appeal held that the question for the tribunal was whether the worker believed, at the time he was making it, that the disclosure was in the public interest; whether, if so, that belief was reasonable; and that, while the worker must have a genuine and reasonable belief that a disclosure is in the public interest, this does not have to be his or her predominant motivation in making it.

64. That followed the decision of Lord Justice Mummery on the approach to be adopted in determining public interest dismissal claims in ***Kuzel v Roche Products Ltd [2008] ICR 799***, in which he said the following:

> “There is specific provision [in the 1996 Act] requiring the employer to show the reason or principal reason for dismissal. The employer knows better than anyone else in the world why he dismissed the complainant. Thus it was clearly for Roche to show that it had a reason for the dismissal of Dr Kuzel; that the reason was, as it asserted, a potentially fair one, in this case either misconduct or some other substantial reason; and to show that it was not some other reason. When Dr Kuzel contested the reasons put forward by Roche, there was no burden on her to disprove them, let alone positively prove a different reason.
>
> I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.
>
> Having heard the evidence of both sides relating to the reason for dismissal it will then be for the tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct

evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence."

65. The question of the reason or principal reason for dismissal in such a claim was also addressed in ***Eiger Securities LLP V Korshunova 2017 IRLR 115.*** The test is not the same as for detriment, or in discrimination law.

66. In ***Abernethy v Mott Hay and Anderson [1974] ICR 323***, the following guidance on what the reason for a decision to dismiss means was given by Lord Justice Cairns:

> "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

67. These words were approved by the House of Lords in ***W Devis & Sons Ltd v Atkins [1977] AC 931***. In ***Beatt v Croydon Health Services NHS Trust [2017] IRLR 748,*** Lord Justice Underhill observed that Lord Justice Cairns' precise wording was directed to the particular issue before that court, and it may not be perfectly apt in every case. However, he stated that the essential point is that the 'reason' for a dismissal connotes the factor or factors operating on the mind of the decision-maker which caused him or her to take that decision.

68. In ***Royal Mail Group Ltd v Jhuti [2020] ICR 731,*** the Supreme Court considered the position where the decision maker is unaware of machinations of those motivated by the fact of a protected disclosure, stating that in such cases it is necessary to consider whether to attribute a reason to the decision maker that was not, in fact, the reason operating in his or her mind when the decision to dismiss was taken, because of those machinations which in effect manipulate the decision maker to secure an overall result of dismissal of the person making the public interest disclosure. Lord Wilson held at paragraph 60:

> "In searching for the reason for a dismissal for the purposes of section 103A of the Act, and indeed of other sections in Part X, courts need generally look no further than at the reasons given by

> the appointed decision-maker. Unlike Ms Jhuti, most employees will contribute to the decision-maker's inquiry. The employer will advance a reason for the potential dismissal. The employee may well dispute it and may also suggest another reason for the employer's stance. The decision-maker will generally address all rival versions of what has prompted the employer to seek to dismiss the employee and, if reaching a decision to do so, will identify the reason for it. In the present case, however, the reason for the dismissal given in good faith by Ms Vickers turns out to have been bogus. If a person in the hierarchy of responsibility above the employee (here Mr Widmer as Ms Jhuti's line manager) determines that, for reason A (here the making of protected disclosures), the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts (here inadequate performance), it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker."

Discussion

(i) Did the respondent have a health and safety representative or committee at the place where the claimant worked?

69. The evidence was that the respondent had a health and safety representative in the Kirkwall depot, Mr T Davies, at the material time.

(ii) If so, was it not reasonably practicable for the claimant to raise the matters referred to below by those means?

70. Yes. The respondent did not give the claimant any induction when he arrived in Kirkwall. The evidence was not clear as to what precisely was available on the notice board at that time, and if there was a notice to the effect that Mr Davies was the representative the claimant did not see that. He might have done so, or asked those there (which included Mr Davies

himself) but in light of his lack of actual knowledge and the fact that the claimant was only there for a week before raising the issue he did with Mr Jack, the Tribunal concluded that it was not reasonably practicable for him to have raised the matter with Mr Davies. Whilst it is true, as the respondent submitted, that the claimant had known of procedures for health and safety reporting from his time at the Inverness office, that is simply one way to report such matters, and it is not the only way that it is competent in law to do so. The evidence as to what was on the notice board in Orkney was limited, as no one from that location gave evidence, save the claimant himself who stated that he was unaware of it. The Tribunal accepted that evidence. The authority of ***Kerr*** provides that the standard of reasonableness should not be set too high given the context of a health and safety matter, and in all the circumstances the Tribunal considered that the claimant had acted reasonably within the statutory test.

(iii) Did the claimant bring to the respondent's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety under section 100(1) (c) of the Employment Rights Act 1996?

71. Yes. The claimant told Mr Jack on 15 July 2021 that he believed that the wrong grade of oil was being used in the respondent's vehicles at the Orkney depot. The grade used should have been hypoid oil, which had a high viscosity. What was used was I-shift oil which had a lower viscosity. As a result, it had caused, in his reasonable belief, damage to the vehicles particularly to its gear box, differential, and in one case prop shaft. It caused the gears to grind together leaving metal shavings. He believed that that affected the safety of the brakes on the vehicles. They were used in public transport.

72. The Tribunal considered that his belief in that regard was reasonable. It considered that he had a genuine concern that it was the cause of what was material damage that he had seen. That damage was to a vehicle for public transport. The Tribunal considered that this was not purely an issue of maintenance as the respondent argued. Maintenance is, the Tribunal

considered as a matter within its judicial knowledge, partly if not primarily for purposes of safety, where conducted in the context of public transport. If oil used lacks sufficient viscosity and might have caused the damage the claimant saw, that is potentially at the very least a matter of health and safety. It is within judicial knowledge that public transport may be used by those who are elderly or children, who may from time to time be standing when a bus is in motion. If there is a sudden issue to the gearbox, prop shaft or other parts of the mechanical or other systems in that bus, the possibility of injury is clear.

73. The Tribunal noted the evidence of Mr Sherrie, who is an employee of the respondent with wide experience, but did not consider that evidence determinative. He is not independent of the respondent, and not an expert witness. There was no evidence that he had conducted a full investigation into the issue, or had viewed himself the damage to gearboxes and other items. His view that the oil used was adequate and within specification was not consistent with the summary of events document provided in writing by Mr Jack, which accepted that the wrong oil had been used, and stated that a different oil had been ordered. His view that all reasonable mechanics would consider the issues raised by the claimant as ones of maintenance was considered, but the weight of that evidence was limited given his position as an employee of the respondent. The Tribunal did not consider that in all the circumstances the claimant was not reasonable in his belief. The claimant's belief that the wrong oil had been used, that it was not sufficiently viscous, and that that may have resulted in damage to the gear boxes, differentials, and in one case a prop shaft, of buses was based on what he had seen. The view that this was an issue of health and safety accorded with what the Tribunal considered to be common sense when the issue was one that arose in the context of public transport when the issue of safety is, or ought to be, paramount.

74. The Tribunal noted in this regard the several occasions when the claimant referred to the matter in meetings with the respondent. He did so before Mr Buick, Mr Wright, Ms Robertson, Mr Ferguson and Ms McCluskie. None of those were technical experts, but none of them sought technical advice from those who were. Mr Buick and Mr Wright did not appear to

understand what the grievance, at its heart, was about, but in this regard the reason for that is likely to have been that Mr Reid did not send them the formal grievance letter. Mr Ferguson and Ms McCluskie looked at matters from the different perspective of discipline, and did not appear to appreciate that how the claimant had or had not conducted himself may have been affected to an extent by his frustration at the events as they unfolded and the circumstances of his having been told, he alleged, that he was being removed from the island for challenging management. It appears that that belief arose from his alleging use of the wrong oil and then what he said was a form of cover up of that. It may be that the claimant did not explain that as clearly and simply as he might have done, but the respondent did not take as much care as it ought to have done to find out what it was about, and there was no full interview of the relevant witnesses including Mr Jack, Mr Horwood-Smith and Mr Willis on that issue, and they did not give evidence before us. There was no direct evidence to support for example the written report prepared by Mr Jack, or the statement from Mr Willis. That the claimant sought to raise the matter with a number of the respondent's employees, consistently, and alleged with good reason that his grievance had not been properly investigated, all of which confirmed the impression that his own views were genuinely held, and that what he had done fell within the statutory terms. Again the authority of ***Kerr*** was considered to be instructive in this regard.

(iv) If so, was the reason or principal reason for his dismissal that he had done so?

75. The Tribunal concluded that this question should be answered in the negative. It considered that the evidence of Mr Ferguson the dismissing officer should be accepted as credible and reliable. He gave that evidence in a clear and straightforward manner. That evidence was that his decision to hold that there had been gross misconduct by threatening Mr Willis was based on what the claimant told him about the events on 17 July 2021. His evidence was however inconsistent with the terms of his own letter of dismissal to the claimant, which gave as the reason "threatening behaviour towards another employee as documented by 3 witnesses".

The Tribunal was concerned at that inconsistency, and other matters as set out below. After reviewing all the evidence, addressed below, it accepted the submission of the respondent's counsel Mr Hardman that that wording was "wrong and careless".

76. Mr Ferguson's evidence was supported by Ms McCluskie, who the Tribunal considered to be clearly a credible and reliable witness. She held the appeal against dismissal, and when she did so asked the claimant in detail about the events that day, and then based her decision specifically on what he had admitted to her as having been said by him to Mr Willis. She believed the words used to be threatening, so stating in her decision letter. Whilst the focus is on the evidence of the dismissing officer Mr Ferguson, the appeal against dismissal can be regarded as a part of the process of dismissal, as the respondent contended, and the evidence from that appeal is therefore relevant. An appeal against dismissal can of course reverse that dismissal, and is a part of the overall process that constitutes a dismissal. That is the position when considering the fairness of a dismissal, for example set out in ***Taylor v OCS Group [2006] IRLR 613***. Fairness is a very different issue to the issues in this case, which relate to the reason or if more than one principal reason for the dismissal, but the context remains within the 1996 Act, and a dismissal alleged to be automatically unfair either under section 100 or 103A. Separately Ms McCluskie's evidence that she considered there to have been gross misconduct from the words the claimant admitted to using supports Mr Ferguson's evidence that he believed that the words the claimant accepted he had used justified dismissal of themselves, and provided support for the view that that was Mr Ferguson's genuine belief, albeit that precisely what was admitted to each was different to some extent. Those differences were not however material in this context. There was a further appeal, but the person concerned Mr Stewart did not give evidence.

77. This was all considered against the background of a large number of issues where not only had procedures not been followed, but events had taken place that were unusual, which collectively were indicative of a level of control by Mr Reid over what happened that was suspicious. These issues were the following:

78. The claimant was suspended over an internal communication system called Blink. He then received a letter dated 20 July 2020 calling him to a disciplinary hearing four days later without any investigation having been conducted, which was a breach of the respondent's own procedure despite that procedure being referred to in the letter. The meeting was firstly re-arranged and then postponed to allow the grievance to take place.

79. When the claimant intimated a grievance he did so by emails, but with a formal grievance letter, as he described it, dated 28 July 2020. That email was not however passed to the grievance officer Mr Buick. Mr Reid was the person passing documents to those involved, and his failure to send the formal grievance letter setting out specifically what the claimant was complaining about, which was that when he raised issues in Orkney he was told that he was "challenging management" and removed, was particularly suspicious. That formal grievance letter was not known to Mr Buick. Mr Reid gave his evidence first, before that fact had been known to the Tribunal, or other matters as referred to below. Mr Reid was not asked either in examination in chief or otherwise about why the formal grievance letter was not sent to Mr Buick, or as to those other matters, accordingly.

80. When the grievance outcome from Mr Buick did not deal with that issue, which was the first of the numbered issues within the formal grievance letter, the claimant appealed. He set out his arguments during that appeal, but Mr Wright did not appreciate what exactly the claimant was complaining about. He thought that the challenging management issue related to the allegations of threatening managers, being conduct alleged as having been by the claimant himself, not what the managers there had said to him as the reason for the removal from the island, as the claimant alleged. The grievance he raised was not properly investigated during the appeal, or at all. That was very surprising indeed, given the issue that led to the events, and what he had alleged himself.

81. Mr Wright's outcome letter was that there should be a full investigation. That was not for a grievance, but a disciplinary matter. Ms Robertson was

tasked by Mr Reid with doing so. She interviewed the claimant, and had sent to her a written statement from Mr McQuaid, but she did not interview those who were witnesses to the events, being at the very least Mr Willis, Mr Horwood-Smith, and Mr Fraser (who originally was also charged with threatening behaviour at that same meeting but that was not pursued in relation to him). That was so although Mr Buick had interviewed Mr Willis and Mr Horwood-Smith in relation to the grievance. She might well also have taken statements from others referred to in the documentation provided, such as Mr Jack.

82. No investigation report was prepared, but the minutes of the meeting with the claimant and Mr McQuaid's statement were sent by her to Mr Reid, and she in effect recommended that a disciplinary hearing take place. The claimant sent amendments to those minutes to Ms Robertson which she forwarded to Mr Reid.

83. Mr Reid passed to Mr Ferguson the written documents from Mr Willis, Mr Horwood-Smith and Mr McQuaid, and Ms Robertson's minutes of her meeting with the claimant. He did not however pass to him the claimant's amendments to those minutes. That was also not addressed in his evidence, and was suspicious.

84. Mr Ferguson read the documents he was passed. He framed a letter dated 7 September 2020 calling the claimant to a disciplinary hearing, referring to "threatening behaviour towards another employee", which had not been the term used in the 20 July 2020 letter. He attached the written documents from Mr Willis, Mr Horwood-Smith and Mr McQuaid,

85. The disciplinary meeting took place on 9 September 2020 with Mr Ferguson and the claimant present. It mainly consisted of the claimant explaining his concerns as to the damage caused by the oil that was used, and only one question was asked, according to the note, as to the event on 17 July 2020. The claimant was asked in effect if he had threatened Mr Willis, and replied that he had not done so by physical abuse. That reply did not challenge use of threatening words. The claimant had been sent the documents referred to but did not go through them in detail, but nor did Mr Ferguson ask him for detailed comments on them. After the

meeting Mr Ferguson viewed parts of CCTV footage provided to him, which did not show anything material to the allegations made, and he asked Mr Fraser to give a statement, which he declined to do.

86. The letter of decision from Mr Ferguson dated 14 September 2020 informed the claimant that he was summarily dismissed. It referred to the documentation, not the admissions by the claimant. It was argued for the respondent that that was wrong as referred to above, and although we accepted that it is at the least concerning that the reason for dismissal is not accurately set out, and differs so markedly from the oral evidence given.

87. Those who might have given evidence as to events that day, particularly Mr Willis and Mr Horwood-Smith, were not witnesses before us. They had ceased to be employees, and although no witness order was sought for them a party is not required to seek such an order. The respondent did not as it turned out seek to rely on the evidence of those witnesses in their written documents, or that from Mr McQuaid who was also not called as a witness. The claimant was not cross examined as to the allegations in those documents, as we understood it, for that reason. The allegations made therein are not therefore established as a part of the evidence before us, and not a part of our findings for that reason. The findings of fact are based in this regard on what the claimant accepted before the respondent, and before us, he did say.

88. What is nevertheless concerning is that if that letter of dismissal is taken at face value the allegations made in those documents are very different ones within themselves. Although there is some similarity in the words alleged as having been used at the meeting by the claimant in the remarks of Mr Willis and Mr Horwood-Smith, the allegations made by the latter of action by the claimant in having heavy tools in his hand, making a clenched fist, and moving as if to strike him, were not supported at all in Mr Horwood-Smith's brief email statement. The statement of Mr McQuaid was very different, alleging different threats on a different occasion. That there were such obvious differences between the documents referred to and not addressed in the letter of dismissal was also concerning. What is

also concerning in this regard is that the claimant received a text message to inform him that he should be at the depot with his belongings at 3pm that day, before any meeting with him, or discussion, had taken place. Mr Fraser reported to him that they were to leave the island. Why that was done in such circumstances was not a part of the evidence before us as Mr Horwood-Smith and Mr Willis were not witnesses. The facts did however tend to support the argument for the claimant that he was being removed from the island because he had been considered to be challenging the management either at that location or more generally or both.

89. The claimant asked for the CCTV evidence, but was not shown it before Mr Ferguson, and not shown all of it, simply selected parts of it, when he met Ms McCluskie. The Tribunal accepted that she had made reasonable enquiry as to that, and had been assured by Mr Anderson that he had viewed everything and nothing more that was relevant existed, but not being more open about that, and doing so earlier in the process, was also of some concern.

90. In the light of that body of evidence the Tribunal was alive to the possibility that the respondent had made arrangements deliberately to limit the extent of inquiry into the grievance, and then to move separately to secure the dismissal of the claimant, all on the basis that raising the concerns that he did was perceived as a form of trouble-making. That is in many ways at the heart of what the claimant's claim is. The matters referred to do raise a suspicion that that is what occurred. The claimant's contention that his grievance was never properly investigated is well founded. In reality the central part of his grievance was not investigated at all. That appears to be as Mr Buick did not have passed to him the formal grievance letter, when quite obviously he should have been, and although the claimant informed both him and Mr Wright of the nature of his concerns neither had the technical understanding to address that, and neither sought assistance from those who did. What is also clear is that the disciplinary issue was not properly investigated. Witnesses to what had occurred were simply not interviewed when the case cried out for that to be done. Separating the grievance out from the disciplinary matter could have been

an attempt to secure dismissal for the making of the allegations the claimant set out, and not forwarding the formal grievance letter, or the amendments to the investigation meeting notes for example, tend to give that impression. The absence of HR input into matters was striking. These are not straightforward issues, and a company of the size of the respondent, part of the Stagecoach group, would normally be expected to have detailed HR advice being given to managers. If that had been done, the procedural and other issues referred to may have been avoided. Equally for a public transport operator, the Tribunal would normally expect issues that may relate to safety, even if that operator did not believe them to do so, to be investigated competently and transparently. That that was not done, and not done on a scale that was extensive, was a matter of particular concern.

91. The Tribunal nevertheless concluded that an analysis of the evidence led before it led to the decision that the reason or principal reason for the dismissal was the claimant's conduct on 17 July 2020, referred to in more detail below, which was perceived by the respondent to be threatening one of its managers. That was so firstly as the claimant either did not dispute the language he used, or admitted specifically to having used language, that was at the very least highly insubordinate towards one of his managers. It is language that could be considered to be threatening simply in its terms. Mr Ferguson considered that it warranted summary dismissal. This is not a claim of unfair dismissal under section 98(4) of the Employment Rights Act 1996. This Tribunal requires to consider whether the reason was as given by the respondent or as alleged by the claimant, not whether the decision is a fair one. The Tribunal accepted Mr Ferguson's evidence that that was his genuine belief. Secondly, Ms McCluskie considered matters independently of Mr Ferguson, assessed matters in more detail than he did, followed up on the issue of CCTV and came, specifically, to the conclusion that the language used, as the claimant admitted to her, was threatening and that dismissal was the appropriate outcome because of that. Her evidence was accepted by the Tribunal. Thirdly, this is not a case of a respondent inventing evidence and placing it before a manager as a way of removing a person making a

disclosure as to health and safety or otherwise, as the case of ***Jhuti*** had referred to. The evidence on which the decision to dismiss was based came from the claimant himself, both before the respondent and as he accepted he ought not to have used, to his credit, before this Tribunal. That was an important distinction with that authority, as Mr Hardman submitted. The facts of this case do not therefore fit within the factual matrix of that case. That was so although there was a suspicion of machinations having taken place as was described above. Fourthly the claimant accepted before Ms Robertson and us that there had been raised voices. That is a factor that also makes it more likely that the remarks he made, in what was at least a raised voice, had a character that would ordinarily be regarded as threatening in nature, and accepted as such by Mr Ferguson and Ms McCluskie. Fifthly, although the claimant's surprise and upset at being removed from Orkney in the circumstances was understandable, that does not justify how he spoke to Mr Willis. The words as he accepted he used were personal, harmful, and derogatory, and said to one of his managers. The claimant did not say to Ms Robertson something to the effect that he ought not to have used those words or that he apologised to Mr Willis. Nor did he say that to Ms Robertson in the meeting with her. When she asked the claimant what he would have done if Mr Willis had not got out of his sight his reply had been "well he would have been goading me", and added later that he would have driven away. Mr Ferguson was aware of the terms of that meeting from the minutes he had seen, albeit not those with the claimant's amendments. Later the claimant told Ms McCluskie that he felt that his human rights were being breached and thought that "I'm not taking that". That wording is consistent with someone reacting to the situation in a manner that can be regarded by the recipient as threatening, and then so considered by the managers considering the issue in a disciplinary or appeal hearing. That chapter of evidence gave the Tribunal the impression that the claimant's evidence on the circumstances of the event had sought to minimise what he had done and said, and how he had done so. Consideration of the evidence overall also led to the conclusion that the behaviour that the claimant had accepted, and that the respondent's witnesses, particularly Mr Ferguson believed had happened, were sufficiently serious to be properly regarded

as gross misconduct justifying dismissal and not lesser conduct which did not do so, used to cover up the real reason for the dismissal being the disclosures as to health and safety that were made. Finally the Tribunal noted that Ms Robertson, Mr Ferguson and Ms McCluskie were all from outwith the Highlands area, being the area where the respondent operated, and were independent of the managers involved in the incident. The position of Mr Stewart was not considered in detail as he did not give evidence. The Tribunal adds for completeness that it did not consider that it was inappropriate to use Inverness as the location for the hearings as that was more convenient geographically for the claimant. The important factor is that the personnel involved were not from the Inverness or Kirkwall depots, or from the region in which the respondent operated. Taking all these factors into account and considering the evidence as a whole, the Tribunal considered that the reason for the dismissal, or the principal reason, was that the claimant was believed to have spoken in a threatening manner to Mr Willis and that that was gross misconduct meriting summary dismissal.

(v) Did the claimant make a qualifying disclosure to the respondent under section 43B of the Employment Rights Act 1996 and in particular did he have a reasonable belief that the information he disclosed tended to show that a relevant offence or failure had occurred and that the disclosure was made in the public interest?

92. For essentially the same reasons as given above, the Tribunal answers this issue in the affirmative. The claimant did have a reasonable belief that the information he gave to Mr Jack on 15 July 2020 and in subsequent meetings particularly with Ms Robertson and Mr Ferguson, and then with Ms McCluskie. That information was that to the effect that the health or safety of an individual (being a passenger or member of staff on one of the buses of the respondent) had been endangered, or is likely to be so in the event that the I-Shift oil was again used rather than hypoid oil. The claimant did not say so in terms, but it was sufficiently clear from what he did say that this was such an issue. The section does not require that the words “health and safety” be used. The section uses the word “tends”, indicating that spelling the issues out specifically is not necessary. The

Tribunal also noted the respondent's argument, which it accepted, that the appeal was a part of the process of dismissal, and during the appeal process the claimant did use specifically the term health and safety.

93. There was admittedly no direct evidence from the claimant as to the public interest engaged in that, but the Tribunal considered, taking all of the claimant's evidence into account, that that should be inferred. He explained that his concern was related to damage that had been caused to more than one bus, that that damage was, to use his word "catastrophic" in at least one instance and that the risk was of injury to the driver or passengers. This is all evidence given in the context of public transport, and the Tribunal considered that it was clear that the claimant did consider that this was an issue of public interest, not just from that context but also for example by his reference to his human rights, not entirely accurately, in the appeal hearing, and that his belief was a reasonable one in all the circumstances. The Tribunal considered that the disclosure fell within the terms of section 43B(1)(c) of the Employment Rights Act 1996.

(vi) Was the reason or principal reason for the claimant's dismissal the making of that disclosure under section 103A of the Employment Rights Act 1996?

94. No, for the same reasons as given above in relation to section 100. The reason or principal reason for dismissal was the belief that the claimant had used threatening words towards Mr Willis.

Conclusion

95. We answer each of the issues as above. As a result we require to dismiss the Claim, and the issues as to remedy do not arise.

96. For the avoidance of doubt our dismissal of the claims made should not be considered as condoning the manner in which the respondent handled matters. The Tribunal was concerned at the many and serious failures to do so in a competent and appropriate manner. That created a suspicion that the principal reason for the dismissal was as the claimant argued, and although on balance we considered that the evidence did not support such

a conclusion we express the hope that the respondent will consider the terms of this Judgment carefully, and assess whether to adopt changes to its practices and procedures in light of it.

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10 **Employment Judge:** **A Kemp**
Date of Judgment: **15 July 2021**
Date sent to parties: **15 July 2021**