



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Mr A Renuka Jayadev

A M Technology Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 3-8 November 2021

BEFORE: Employment Judge A M Snelson

On hearing Mr K Webster, counsel, on behalf of the Claimant and Ms H Bell, counsel, on behalf of the Respondents, the Tribunal adjudges that:

- (1) By consent, the Claimant complaint of unauthorised deductions from wages is well-founded.
- (2) By consent, the Respondents are ordered to pay to the Claimant In respect of (1) above, the sum of £71,593.68.¹
- (3) The Claimant's complaint of unfair dismissal under the Employment Rights Act 1996 ('the 1996 Act'), ss94 and 103A is dismissed on withdrawal.
- (4) By consent, the Claimant's complaint of unfair dismissal under the 1996 Act, ss94 and 98 is well founded.
- (5) In respect of (4) above, the Respondents are ordered to pay to the Claimant compensation as follows:

Basic Award

4 x £525: £ 2,100.00

Compensatory Award

Loss of earnings, benefits
and statutory rights: £31,687.18
ACAS uplift (25%): £ 7,921.75
Grossing up: £ 3,843.57

£43,452.50

TOTAL: £45,552.50

¹ Note that the sum is awarded as a net figure, the Tribunal having accepted the Respondents' evidence that they have made appropriate deductions for income tax and national insurance contributions and accounted therefor to the proper authorities.

REASONS

Introduction

1 The Respondents, a UK company incorporated in March 2015, were set up as the vehicle for a business founded in Italy in 2012 or 2013, the main purpose of which was to develop and market an air purification technology called Airlite. The Italian venture was launched by Mr Antonio Cianci and Mr Massimo Bernardoni. The joint founders, directors and shareholders of the Respondents at the time of incorporation were Mr Cianci, Chief Executive Officer, Mr Bernardoni, Chief Technical Officer, and the Claimant, Chief Operating Officer ('COO').

2 The Claimant was continuously employed by the Respondents in the capacity of COO from 1 April 2015 until either 16 or 18 January 2020 (nothing turns on the small disagreement as to the termination date) on an annual salary of just over £96,000. His employment ended with summary dismissal.

3 By a claim form presented on 12 June 2020 the Claimant brought complaints of unauthorised deductions from wages, unfair dismissal on 'whistle-blowing' grounds and 'ordinary' unfair dismissal, all of which were resisted.

4 The case came before me for final hearing by CVP on 3 November this year with five days allowed. The Claimant was represented by Mr Keith Webster, counsel; the Respondents by Ms Helen Bell, counsel.

5 Over the first two days of the hearing, the dispute was narrowed in three significant respects. First, the Respondents conceded that the Claimant's claim for unauthorised deductions from wages was well-founded and it was agreed that quantification should be deferred until the end of the hearing. Second, the Claimant withdrew the complaint of unfair dismissal on 'whistle-blowing' grounds. Third, the Respondents accepted that the Claimant was entitled to succeed in his complaint of 'ordinary' unfair dismissal.

6 Although the disputes on liability fell away, I was asked to address certain issues of principle bearing on the surviving 'ordinary' unfair dismissal claim, all strictly remedy points. Accordingly, I gave an oral adjudication on the afternoon of day three, holding that:

- (1) Under the *Polkey* principle², any compensatory award would be limited to six months' loss.
- (2) There would be no separate reduction of the basic or compensatory award on account of the Claimant's conduct prior to his dismissal.
- (3) There would be no separate reduction of the basic or compensatory award on *Devis v Atkins*³ grounds.
- (4) The compensatory award would be increased by 25% pursuant to the Trade Union & Labour Relations (Consolidation) Act 1992, s207A(2).

² See below

³ Ditto

7 By agreement, I then adjourned to the afternoon of day four, when further evidence was given by the Claimant and Mr Hubbocks, and counsel made submissions addressing such remedies issues as remained (some having fallen away in the course of that session).

8 In the late afternoon of day four I gave a series of further oral adjudications. In summary these were to the following effect.

- (1) The loss of earnings claim should be calculated on the basis of the average earnings over the last six complete months of employment (July to December 2019).
- (2) The loss of statutory rights award should be limited to £100.
- (3) The claim for loss of medical insurance benefit was not made out.
- (4) The Respondents' contention that the award for unauthorised deductions from wages should be reduced under the Trade Union & Labour Relations (Consolidation) Act 1992, s207A(3) was rejected.

9 The same evening, the parties sensibly agreed the sums to be awarded. I have reproduced them in the Judgment above.

10 These reasons are given in written form pursuant to requests made orally at the hearing by Ms Bell.

The Legal Framework

Unfair dismissal

11 The unfair dismissal claim is governed by the Employment Rights 1996 ('the 1996 Act'), s98. It is convenient to set out the following subsections:

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and**
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
- (2) A reason falls within this subsection if it – ...**
 - (a) relates to the capability ... of the employee for performing work of the kind which he was employed by the employer to do;**
 - (b) relates to the conduct of the employee,**
 - ...**
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –**
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
 - (b) shall be determined in accordance with equity and the substantial merits of**

the case.

12 The only remedy for unfair dismissal sought by the Claimant is compensation. The legislation provides for basic and compensatory awards. The basic award is calculated by application of a formula which takes account of the employee's age, period of service and weekly pay (which is subject to a cap). The 1996 Act, s122(2) includes:

Where the tribunal considers that any conduct of the complainant before the dismissal ... was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

13 As its name suggests, the compensatory award is intended to enable the Tribunal to compensate the employee for monetary losses flowing from the unfair dismissal. The 1996 Act, s123(1) states:

Subject to ... the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

14 The compensatory award too may be the subject of reduction on account of the conduct of the claimant. By s123(6) it is provided that:

Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

15 Under the principle in *Polkey v AE Dayton Services Ltd* [1988] ICR 142 HL as developed in subsequent case-law, the Tribunal must in appropriate cases have regard in its assessment of any compensatory award to the question whether, but for the factor which renders the dismissal unfair, the employee would in any event have been fairly dismissed, either when the dismissal took effect or at some later point. This is in reality simply a function of the broad requirement under s123(1) to award compensation which is 'just and equitable' and reflects loss 'attributable to' the employer's tortious act of dismissing the employee unfairly.

16 The 'just and equitable' requirement under s123(1) may also result in a compensatory award being reduced or extinguished in circumstances where the *Polkey* principle does not operate, such as where misconduct of the employee comes to light after the dismissal (see eg *W Devis & Sons Ltd v Atkins* [1977] ICR 662 HL).

The ACAS uplift

17 The Trade Union & Labour Relations Act 1992 ('the 1992 Act'), s207A provides, so far as material, as follows:

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

18 The relevant Code of Practice here is the ACAS Code of Practice on disciplinary and grievance procedures (2009). Para 1 states:

This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

- **Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should be followed, albeit that they may need to be adapted.**
- **Grievances are concerns, problems or complaints that employees raise with their employers.**

The Code does not apply to redundancy dismissals or the non renewal of fixed term contracts on their expiry.

19 In *Lund v St Edmund's School*, Keith J, giving judgment in the EAT on 8 May 2013, said this (para 12):

If the employee faces a complaint which may lead to disciplinary action (whether because of his misconduct or his poor performance), the Code applies to the disciplinary procedure under which the complaint is to be investigated and adjudicated upon. Of course, the outcome of the disciplinary procedure may not result in the employee's dismissal at all. Or it may result in his dismissal which on analysis turns out not to be a dismissal for his misconduct or poor performance but a dismissal for something else. The important thing is that it is not the ultimate outcome of the process which determines whether the Code applies. It is the initiation of the process which matters. The Code applies where disciplinary proceedings are, or ought to be, invoked against an employee.

20 In *Hussain v Jury's Inns Group Ltd* UKEAT/0283/15/JOJ, Laing J (as she then was), sitting in the EAT, expressed on 3 February 2016 the *obiter* view (para 47) that the Code of Practice did apply to dismissals for 'some other substantial reason', but explicitly declined to decide the point, it being unnecessary to do so.

21 In *Holmes v Quintec Ltd* UKEAT/0206/15, in a judgment given on 26 April 2016 Simler J (as she then was), sitting in the EAT, stated (para 15):

... properly construed the Code of Practice does not apply to internal procedures operated by an employer concerning an employee's alleged incapability to do the job arising from ill health or sickness absence and nothing more. It is limited to internal procedures relating to disciplinary situations that include misconduct or poor performance but may extend beyond that, and are likely to be concerned with the correction or punishment of culpable behaviour of some form or another.

22 In *Phoenix House Ltd v Stockman* UKEAT/0264/15/DM, Mitting J, giving judgment in the EAT on 17 May 2016, respectfully disagreed with Laing J's "provisional" view in *Hussein*. He said this (para 21):

In my judgment, clear words in the Code are required to give effect to that sanction, [under s207A] otherwise an employer may well be at risk of what is in reality a punitive element of a basic and compensatory award in circumstances in which he has not been clearly forewarned by Parliament and by ACAS that that would be the effect of failing to heed the Code. The Code does not in terms apply to dismissals for some other substantial reason. Certain of its provisions, such as for example investigation, may not be of full effect in any event in such a dismissal. What is required when a dismissal on that ground is in contemplation is that the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee holding the position that she does cannot be reincorporated into the workforce without unacceptable disruption. That is likely to involve, as here, a careful exploration by the decision maker ... of the employee's state of mind and future intentions judged against the background of what has happened. Of course, it would be unfair, as it was found to be here to a marginal extent by the Tribunal, to take into account matters that were not fully vented between decision maker and employee at the time that the decision was to be made. Ordinary commonsense fairness requires that. Clearly, elements of the Code are capable of being, and should be, applied, for example giving the employee the opportunity to demonstrate that she can fit back into the workplace without undue disruption, but to go beyond that and impose a sanction because of a failure to comply with the letter of the ACAS Code, in my judgment, is not what Parliament had in mind when it enacted section 207A and when the Code was laid before it, as the 2009 and 2015 Codes both were.

Oral Evidence and Documents

23 I heard oral evidence from the Claimant and, on behalf of the Respondents, Mr Cianci (already mentioned) and Mr Mark Hubbocks, an accountant who provided audit and payroll services to the Respondents from January 2016 and served as the company's *de facto* Finance Director from late 2019 onwards.

24 In addition to the testimony of witnesses I read the documents to which I was referred in the bundle of 823 pages.

25 I also had the benefit of a chronology and cast list.

The Facts

26 The facts essential to my adjudications, either agreed or proved on a balance of probabilities, I find as follows.

27 The relationship between the Claimant on the one hand and Mr Cianci and Mr Bernardoni on the other was difficult throughout almost all of the period of the Claimant's employment. As early as August 2017 the Claimant offered to resign but the crisis was somehow overcome. In June 2018 Mr Bernardoni sought permission from the Board to terminate his employment. Again, a parting of the ways was averted. Later that year it was judged necessary to engage a psychologist specialising in dispute resolution to advise the parties and his

intervention seems to have brought some short-term benefit, but the tensions and difficulties nonetheless returned.

28 The problems had a number of causes. One was a difference in vision as to how the company should progress and develop. Mr Cianci and Mr Bernardoni believed that the focus should be principally on Italy, the UK, the US and China, where there was a prospect of securing early successes. The Claimant, who had a 'Strategic Operations' responsibility was eager to explore wider potential, particularly in the Far East and the Middle East. Another was the tendency of the Claimant to take unilateral measures, some involving the commitment of substantial resources, without discussion with his co-founders. A third was his difficulty in handling challenge and criticism: not infrequently he was rude and dismissive towards Mr Cianci and Mr Bernardoni and shut down their attempts to question or inquire into actions which he had taken in the name of the business. A fourth, perennial cause of concern for Mr Cianci and Mr Bernardoni was the exceedingly weak sales performance in the UK.

29 In April 2019 the Respondents' financial situation took a turn for the worse. In consequence, Mr Cianci, Mr Bernardoni and the Claimant jointly agreed to defer drawing their salaries.

30 In August 2019 the Claimant signed off the company's accounts without Board approval. When taken to task by Mr Cianci for this serious irregularity, his response was entirely dismissive.

31 In October 2019 Mr Chris Birkle, an external accountant engaged by the Company in a Finance Director role, resigned, in significant part as a consequence of the Claimant's abrasive challenges to his professional advice on an important issue relating to the proper accounting treatment of certain stock held in Italy.

32 At a Board meeting on 22 November 2019 Mr Cianci gave details of funding which was being sought for the business from two separate sources. At a further Board meeting on 6 December 2019 it was confirmed that funding of €500,000 had been irrevocably secured from an investor platform called Mamacrowd, which had been matched by support in the form of a loan of the same amount backed by the Italian state. (The funds were expected to be received in January 2020. In the event, the sums ultimately advanced were greater than those mentioned on 6 December 2019 but their receipt by the company was delayed by a matter of some weeks in circumstances which were not foreseeable in December 2019.)

33 On the strength of these commitments, the Claimant entered into an agreement, dated 13 December 2019, to advance to the company a bridging loan of £125,000 backed by a debenture. In doing so he fulfilled a prior commitment to make the loan once the funding discussed at the Board meetings of 22 November and 6 December had been irrevocably secured. The loan was repaid in late February 2020.

34 In the minutes of successive Board meetings between 19 September 2019 and 12 December 2019, all drafted by the Claimant, it was reported that, while the company's finances were "delicate", it was not wrongfully trading because "the

Directors [could] see a route through to a solvent position with sufficient credibility to give them comfort.”

35 Prior to 7 January 2020 the Respondents had negotiated payment plans with their suppliers, deferring payment dates to mid-February. Given the secured funding and its anticipated arrival in January, there was no reason to think that they would not be in a position to meet their debts for the foreseeable future.

36 In an email of 7 January 2020 to an investor in the business, Mr Juha Koski, which was copied to other directors, Mr Cianci made a number of statements concerning the current state of the company including the assertion that it was not “trading insolvent”.

37 A few hours later on 7 January 2020, the Claimant sent an email to Mr Cianci and Mr Koski stating, “We are not trading solvent at this point in time but not wrongfully trading. The view shared by Antonio is likely his personal view and not the one recorded at our board meetings.” In fact, the concept of “trading solvent” is not mentioned in any of the Board meeting minutes.

38 The messages of 7 January 2020 sparked a tense and uncomfortable series of further exchanges between Mr Koski and the Directors over the next three days. A later consequence was that, presumably at the behest of Mr Koski, the Respondents felt it necessary to approach an independent insolvency practitioner for advice. By an email of 29 January 2020 that individual advised that, on the information supplied, the Directors ought not to be at risk of liability for wrongful trading.

39 In private WhatsApp exchanges at around the same time the Claimant directly charged Mr Cianci with lying about the company’s solvency status.

40 A Board meeting was scheduled to take place in Milan on the afternoon of 16 January 2020. Prior to the time set for the meeting, a conversation took place involving Mr Cianci, Mr Bernardoni and the Claimant. Mr Cianci and Mr Bernardoni explained their view that it was in the interests of all concerned for the Claimant to leave the company. An offer was made to purchase his shares in the company for the sum of €1 million. The Claimant responded angrily and left the office at once. He did not return for the Board meeting, which proceeded in his absence. In the course of it, Mr Cianci and Mr Bernardoni resolved that the Claimant be dismissed. Although the matter was in dispute, it is now common ground that the dismissal was effective in law. The only disagreement is as to the date: the Claimant’s case is that the dismissal was communicated to him on 18 January, when he received the minutes of the Board meeting; the Respondents say that it was sufficiently communicated orally in the conversation on 16 January.

41 The Claimant was never the subject of any disciplinary warning. He was not given prior notice of the intention of Mr Cianci and Mr Bernardoni to dismiss him at the Board meeting on 16 January, let alone their grounds for doing so. He was not advised of his right to be accompanied. He was not offered any right of appeal.

42 According to the evidence of Mr Cianci, the sales generated by the London office, for which the Claimant was responsible, totalled for the years 2016, 2017, 2018 and 2019 the following sums respectively: less than £1,000, £5,400, £17,000 and £7,500. The Claimant appeared to disagree with these numbers, but offered no coherent basis for doing so. The office seems to have had a headcount of three or four over that period. On any view, the results bore no relation to his projections (such as his forecast of revenue of nearly £1.3 million for the fourth quarter of 2019 alone).

43 It was, as I understood it, common ground at the hearing that the Claimant's shareholding in the business has a nominal value of about €8 million and those of Mr Cianci and Mr Bernardoni, €12 million. It was not suggested that these values have increased significantly since January 2020.

Secondary Findings and Conclusions

Unfair dismissal - points of principle

Polkey

44 Before me, counsel debated the question whether the dismissal of the Claimant was substantively fair or unfair. I am not sure that that is the appropriate question. The issue is whether the Respondents can demonstrate that, had a fair procedure been followed, the Claimant would have been dismissed in any event, or at least that there is an appreciable chance that he would have been. And in a case such as this, where *no* procedure of any sort was operated, the necessary inquiry must focus not only on whether there would have been a dismissal but also on whether it would have been fair as a matter of substance and on the period of time which operation of a fair procedure would have occupied.

45 I find that by 16 January 2020 the bond between Mr Cianci and Mr Bernardoni on the one hand and the Claimant on the other was broken and there was no real prospect of it being repaired. Trust and confidence and respect on both sides had gone. The already severely troubled relationship was almost certainly doomed before 7 January 2020. The Claimant's unheralded and needless public challenge on that day to Mr Cianci on the (self-evidently delicate) subject of the solvency of the company, without even a prior attempt to broach the matter privately, aggravated matters further. And in my judgment his accusations against Mr Cianci of lying contained in subsequent messages rendered a dire situation irremediable.

46 In my view it would have been open to Mr Cianci and Mr Bernardoni to initiate a process against the Claimant on 16 January 2020 in contemplation of dismissal. Had they done so, some formalities would have needed to be observed. The company's case would have needed to be set out in writing. Evidence would have needed to be marshalled and served. The Claimant would have needed the opportunity to obtain advice and perhaps representation. Moreover, given his position as a shareholder and director, the wider complications would have needed to be considered. In a case like this, a pause for reflection and perhaps dialogue would have been likely to suggest itself to both sides – especially given the

desirability of exploring a parting of the ways on terms which would leave all claims and potential claims fully settled. Mediation or some other form of alternative dispute resolution might have been attempted. If so, the internal proceedings would have needed to be paused to allow that to happen. Besides these considerations, the parties would have been faced with logistical difficulties associated with the fact that the Claimant was in London and Mr Cianci and Mr Bernardoni were in Italy. In addition, the temporal context is significant: the internal proceedings would have been initiated at a time when much commercial activity (in both locations) was severely hindered, if not paralysed, by the consequences of the Covid-19 pandemic.

47 Any notional fair procedure would, no doubt, have been initiated on the fundamental ground that Mr Cianci and Mr Bernardoni could no longer work with the Claimant but examination of that proposition would not have been possible without exploration of their reasons. That, in turn, would have required scrutiny of salient aspects of the Claimant's conduct and the main alleged shortcomings in his performance.

48 Having regard to all these factors, I consider that it would have taken up to six months to complete a fair process culminating in the fair dismissal of the Claimant. The burden is on the Respondents to demonstrate that a *Polkey* reduction of the compensatory award is warranted. They succeed to the extent that I find that at the end of the process the Respondents, through Mr Cianci and Mr Bernardoni, would have been unshaken in their belief that their business relationship with the Claimant was no longer workable and that there was no alternative to terminating his employment. I further find that those assessments would have been open to them in the circumstances. But, in so far as Ms Bell argued otherwise, they do not persuade me that the process would have been completed sooner than six months after the actual date of dismissal. In arriving at this assessment I have borne in mind the factors already mentioned. In addition, I take account of the fact that the Claimant had a notice entitlement of at least one month which the Respondents, acting reasonably, would have honoured. I would cap the compensatory award accordingly at six months' loss.

Conduct and contribution

49 Having regard to the 1996 Act, ss122(2) and 123(6), I am not persuaded that the Respondents have justified any additional discount against the Claimant's entitlements to basic and compensatory awards. He may not have been a model employee in all respects but I think it likely that there have been errors and miscommunication on all sides and that the breakdown in the workplace relationship is an unhappy fact for which more than one individual could fairly be held responsible. Specifically, it is not shown that the Claimant's actions or behaviour amounted to 'blameworthy' conduct such as to entitle the Tribunal to diminish the compensatory award to which he is entitled. More generally, it would not be 'just and equitable' to further diminish the compensation properly recoverable in consequence of the Respondents' violation of his right to protection from unfair dismissal.

Devis v Atkins

50 I am not at all persuaded by the scant information in Mr Cianci's witness statement, paras 255-262 that there is any warrant for a reduction in the Claimant's compensatory award on *Devis v Atkins* grounds. It amounts to a series of criticisms of the way in which the Claimant performed his duties. Many are wholly unparticularised. Taken together they come nowhere near to justifying any interference with the ordinary computation of the loss occasioned to the Claimant by his dismissal.

The ACAS uplift

51 In my judgment the discretion to enhance the compensatory award is engaged here. As the case-law makes clear, the applicability of the uplift depends on the subject-matter which the disciplinary or grievance process envisages examining. Accordingly, the mere fact that the employer has it in mind to dismiss on the ground of 'some other substantial reason' is not determinative. Here, the enquiry into the relationship breakdown, and its causes and consequences, necessarily entailed scrutiny of the Claimant's conduct and performance and their effect upon the Respondents' business. To borrow the language of Simler J in the *Holmes* case (cited above), there was (or should have been) an internal proceeding relating to a disciplinary situation that included alleged misconduct or poor performance and was likely to be concerned with the correction or punishment of culpable behaviour of some form or another.

52 The ACAS Code being applicable, I have no hesitation in finding that the Respondents acted in flagrant breach of it and the principles of sound employment relations practice which underpin it. There was no pretence of any form of due process. There is no mitigating circumstance. In my judgment, the proper uplift is the maximum available, namely 25%.

Unfair dismissal - points of computation

53 As stated in para 8(1) above I ruled that net pay should be calculated as an average of the last six complete months. The parties having agreed on six months, it made obvious sense to work by reference to complete months.

54 I found that the alleged right to medical insurance benefit was not established in the evidence and therefore must be disallowed.

55 As for loss of statutory rights, I concluded that a modest award of £100 was appropriate, to reflect that the unfair dismissal had merely hastened by six months a loss which was going to occur in any event.

Unauthorised deductions from wages - ACAS uplift

56 I was not persuaded by Ms Bell's submission that a reduction should be applied to the unauthorised deductions from wages award. The deductions were made on the agreed understanding that the Claimant's right to receive the sums deducted was deferred until such time as he asserted his right to payment of them.

He did so very soon after his dismissal. He did not raise a grievance about them but there would have been little if anything to debate had he done so. Rightly, the Respondents conceded before me his entitlement to outstanding pay and sensibly did not press any technical argument about the appropriate cause of action by which, and forum in which, it could properly be enforced. But given the time it has taken him to secure by litigation what was incontestably owing to him, I cannot conceive that a pre-action grievance would have had any prospect of shortening the process. In all the circumstances, I am satisfied that (a) it was not unreasonable for the Claimant to eschew a pre-claim grievance about outstanding pay and (b) it would in any event not be just and equitable to apply any reduction to his award on account of his doing so.

Outcome

57 For the reasons stated, the Claimant is entitled to the sums awarded in my judgment above.

58 As mentioned above, those sums, as figures, were ultimately agreed. Mr Webster asked me to place on the record that the Claimant was content with the Respondents' assurance that they would be paid within 28 days.

EMPLOYMENT JUDGE SNELSON
26 Nov. 21

Reasons entered in the Register and copies sent to the parties on 26 Nov. 21

..... for Office of the Tribunals