



EMPLOYMENT TRIBUNALS

Claimant: Mr A Tweedale

Respondent: Tithe Barn Club (Aldwick) Limited

Heard at: Southampton - VHS **On:** Wednesday 15 and
Thursday 16 June 2023

Before: Employment Judge A Matthews

Representation:

Claimant: Mrs K Pirks - Lay Representative

Respondent: Ms G Downs (Director) assisted by Mr W Haines
(Employment Consultant)

RESERVED JUDGMENT

1. Mr Tweedale was unfairly dismissed.
2. It is just and equitable to reduce any basic award and any compensatory award made to Mr Tweedale by 25% by reference to sections 122(2) and 123(6) of the Employment Rights Act 1996.
3. The Respondent is ordered to pay to Mr Tweedale unfair dismissal compensation totalling £45,011, comprising a basic award of £11,991 and a compensatory award of £33,020.
4. The recoupment regulations apply and the particulars required by regulation 4(3) are:

Total monetary award: £51,785

The Prescribed Element: £11,236 (being 49/144 weeks of the compensatory award [£33,020 - within this there is an element of compensation for loss of statutory rights not subject to recoupment, but it is very small])

Period to which the Prescribed Element is attributable: 20 July 2022 (being the end of the period for which wrongful dismissal compensation has been awarded) to 28 June 2023 (being treated as the date on which this judgment on remedy is sent to the parties)

Amount by which the monetary award exceeds the Prescribed Element: £40,549

5. Mr Tweedale was wrongfully dismissed.
6. The Respondent is ordered to pay Mr Tweedale pay in lieu of notice of £5,832. No deduction is to be made for tax.
7. Mr Tweedale's claim under regulation 30(1) of the Working Time Regulations 1998 that the Respondent has failed to pay Mr Tweedale an amount due under regulation 14(2) of those Regulations (holiday pay) is well-founded. By consent, the Respondent is ordered to pay Mr Tweedale £942 in this respect. Any amount which the Respondent lawfully deducts from this amount by way of income tax, national insurance contributions or otherwise shall be treated to that extent as in payment of this order. In the absence of evidence to substantiate the lawfulness and amount of such a deduction (such as a payslip), the gross amount specified (£942) shall be due under this Judgment to Mr Tweedale.
8. The total sum ordered to be paid by the Respondent to Mr Tweedale is £51,785 subject to deductions in respect of the holiday pay as provided above.

REASONS

INTRODUCTION

1. Mr Alan Tweedale claims that he was unfairly dismissed and wrongfully dismissed (a claim for notice pay), by the Respondent Company. Mr Tweedale also claims holiday pay, a refund of rent and an award in respect of an alleged promise of a "retirement pot". The holiday pay claim is dealt with by consent above. The Tribunal has no jurisdiction as far as the refund of rent is concerned and this is not dealt with further in this Judgment. There is no allegation nor has the Tribunal seen any evidence that the Company entered any binding contract with Mr Tweedale in respect of a "retirement pot" (outside of NEST contributions). Again, this is not dealt with further in this Judgment.
2. The Company says that Mr Tweedale was fairly and lawfully dismissed for gross misconduct. If the dismissal was procedurally unfair, the Company says that, had it followed the correct procedure, Mr Tweedale would have been fairly dismissed in any event. Further, The Company says that, after the dismissal, it

uncovered evidence of industrial wrongdoing prior to the dismissal which would have rendered a dismissal fair.

3. On the Company's side the Tribunal heard evidence from Ms Georgina Downs (Director of the Company, an investigative journalist by profession), Mr Kevin Wickens (locksmith and former property maintenance contractor) and Ms Helen Riou (niece of Mr Raymond Downs). Each produced a written statement. The Tribunal also saw video testimony from Mr Raymond Downs (Director and owner of the Company). For medical reasons Mr Raymond Downs was not available for questioning. The Tribunal accordingly explained that it would hear Mr Raymond Downs' evidence but accord it little weight. The Tribunal heard from Mr Tweedale, who also produced a written statement.
4. There was a 240 page electronic bundle of documentation. All references in this Judgment are to the pages in the electronic bundle unless otherwise specified. There were also: a letter dated 8 June 2023 from Cathedral Medical Group about Mr Raymond Downs' health, an index to the bundle, 12 video clips of the state of some of the chalets at the Company's site at Selsey, an Annex 2 of photographs on the same subject and 9 video clips of Mr Raymond Downs' evidence. After the hearing both Mr Haines and Mrs Pirks produced written argument, to which they had spoken during the hearing. After the hearing, both sides wrote to the Tribunal about pension contributions, as they had been invited to do.
5. In deciding this case it is not necessary for the Tribunal to make findings in relation to every disputed fact. Where it is necessary, the Tribunal's findings are on the balance of probability taking account of the evidence as a whole.
6. The case was heard over the two days it had been set down for. Judgment was reserved to allow the Tribunal to better consider the evidence and its conclusions.

FACTS

7. The Company runs a holiday leisure park of some 24 chalets and mobile homes at the Windmill Caravan Site, Montalan Crescent, Selsey, West Sussex. On the site there is also a main two storey building, comprising a flat on the ground floor with an office and emergency accommodation on the second floor. At the time of its response in these proceedings, the Company reported two employees, being Mr Raymond Downs and his wife, Mrs Jeanne Downs.

8. Mr Tweedale started work for the Company on 1 October 1995. After over 26 years' service with the Company, Mr Tweedale was summarily dismissed with effect from 27 April 2022.
9. It is appropriate to start with some general background about how Mr Tweedale's employment with the Company began and evolved.
10. In 1995 Mr Tweedale had a chalet or mobile home on the site. Mr Tweedale got to know Mr Raymond Downs. Mr Raymond Downs was and remains, in effect, the site owner through the Company. Mr Raymond Downs lives on the site. Back in 1995 Mr Raymond Downs was running the site himself. The two got on well and Mr Tweedale did a few jobs for Mr Raymond Downs who took Mr Tweedale onto the payroll in 1995. They seem to have worked in harmony and with mutual respect for many years. It is probable that, in recognition of Mr Tweedale's loyal service, Mr Raymond Downs had often given assurances that Mr Tweedale would be looked after as far as pension and accommodation were concerned. Mr Raymond Downs' failure to acknowledge this in these proceedings probably indicates either that his evidence generally was questionable, that his memory was at fault or that his evidence was not entirely his own.
11. A couple of years after Mr Tweedale joined the Company, Mr Raymond Downs appointed Mr Tweedale Site Manager. Thereafter, Mr Tweedale focussed on the site management as such and Mr Raymond Downs concentrated on the administrative side, seeing to the paperwork, mostly on Tuesdays and Fridays.
12. At 209-211 is a statement of the terms and conditions of Mr Tweedale's employment with the Company signed by him on 12 January 2005. During the hearing the Company at first sought to disown this document but later relied on it (see Ms Downs' WS 13-14). Mr Tweedale's job description was to: *"manage the day to day activities at the site, as appropriate, and to act as the resident site supervisor/warden."* Mr Tweedale says that his job was (WS 1.IV) *"renting out properties, maintaining i.e. painting, decorating, garden work, drains, collecting rents, signing holiday contracts, security etc, giving out electric cards."*
13. Around 2005 Mr Raymond Downs introduced his son, Mr Phillip Downs, to do work for the Company through Mr Phillip Downs' management consultancy business, Indigo Management. Whilst the Company is now attempting to back track on the scope it allowed Mr Phillip Downs, over time Mr Phillip Downs took over more and more of the administrative work and day to day decision making from Mr Raymond Downs. Mr Raymond Downs,

increasingly affected by both his wife's and his own ill-health, disengaged from the day to day running of the business and left it to Mr Tweedale and Mr Phillip Downs. Neither Mr Tweedale nor Mr Phillip Downs reported to the other. They worked in parallel. Mr Tweedale comments (WS 4.X111, XIV and XV.):

"XIII. When Philip worked at the Tithe Barn he dealt with finances and the development of the site. Our jobs had separate roles but would cross over on many occasions and I developed an excellent working relationship with him. However I referred to Ray as my boss. Gradually as time passed Ray would say things to me when I approached him "Ask Philp" "Let Philip deal with that" "Philips in charge of that". I took this to mean that Ray was happy for me to look to Philip for many things that once Ray was there to be asked for.

XIV. We often worked as a team to ensure Ray did not have to be disturbed, especially in the last 3 years of course because Ray and myself had strokes and I had nothing but total admiration for Ray looking after Jeanne."

*"XV. Just prior to Covid I would try to contact Ray but was denied access either by phone or in person by Georgina, who had moved on site. I can appreciate it would have been difficult when Covid hit, and all three had made the decision not to have the covid vaccination. During COVID Ray and I spoke only twice. I asked for time off for a holiday, he answered "don't ask me ask Philip". I got the impression from Ray that he wanted to be left alone. When Philip chose to work from home it became very difficult for me. Sharon (my wife) and I did our utmost best to make decisions on behalf of the company, **I felt abandoned!**"*

14. Mr Phillip Downs and Mr Tweedale worked together to do what needed to be done. Authority and reporting lines were not defined in any recorded way that the Tribunal has seen. At best they were blurred. In the period leading up to Mr Tweedale's dismissal, Mr Tweedale and Mr Phillip Downs were effectively allowed to run the business, except when Mr Raymond Downs was consulted or found out about something of which he disapproved. The position changed abruptly when Mr Raymond Downs and Mr Phillip Downs fell out. On 21 March 2022 Mr Raymond Downs terminated the arrangement with Indigo Management, expressing his extreme dissatisfaction (see 47). It was not a coincidence that Mr Tweedale was subsequently dismissed on 27 April 2022, as the Tribunal will come to below.

15. Returning to the chronology, in September 2017 Mr Tweedale had a major stroke. Mr Tweedale's evidence was that this, in effect, left him unfit for work thereafter. It was only Mr Raymond Downs' support that allowed Mr Tweedale to continue working on the site at a reduced pace, with the help of his wife, Sharon. Mr Raymond Downs provided Mr Tweedale with a sit on lawn mower and an automatic pick-up truck and took Mrs Tweedale onto the payroll as Assistant Site Manager from 30 October 2017. These generous acts by Mr Raymond Downs reflect the strong bond that once existed between him and Mr Tweedale.
16. In October 2020 and August and October 2021 Mr Raymond Downs suffered multiple strokes. These further complicated things for Mr Raymond Downs whose wife already suffered from advanced Alzheimer's and chronic kidney disease. Ms Downs is their primary carer. Ms Downs' active involvement in the Company's affairs appears to have started around the end of 2021. The Company had an investment in another business operating a site in Torksey, Lincolnshire. Mr Phillip Downs had dealings with that business and Mr Raymond Downs seems to have asked Ms Downs to investigate those in late 2021. Since then, Ms Downs has been heavily involved with the Company, latterly including its day to day running. Without apportioning blame and justified or not, Ms Downs' antagonistic relationship with the Tweedales has contributed to the turn of events.
17. The Tribunal now turns from the chronology to some specifics.
18. If there were any disciplinary issues between the Company and Mr Tweedale prior to 29 August 2020, they have not been brought to the Tribunal's attention. However, on 29 August 2020 Mr Raymond Downs dismissed Mr Tweedale for reasons dealt with below. On 31 August 2020, Mr Raymond Downs withdrew the dismissal, which Mr Tweedale obviously accepted because he continued to work for the Company. The way in which Mr Raymond Downs acted is instructive. Referred to as "old school" by some during the hearing, Mr Raymond Downs has a proprietorial and autocratic approach to managing the Company. This is borne out by the tone of later communications, including the letter dismissing Mr Tweedale, which the Tribunal will come to. Consultation and fair process are not of concern to Mr Raymond Downs in this context.
19. On 27 April 2022 Mr Raymond Downs summarily dismissed Mr Tweedale from his employment with the Company in a letter of that date (48-57). The letter should be referred to for its full content, but

it is an important document and large parts of it are reproduced below.

- There had been “*internal investigations over the last few months*”.
- “*Phillip had no rights to take full control of the Company in the way that he did including taking all the money he took (over what he was supposed to take) not only from Tithe Barn but also from John and Jane Mannion in Torksey. And also taking full control of all the finances in the on line Banking when impersonating me and he made decisions for years as if he was the owner of the Company. Yet this is my company, that I built up for 65 years with my wife Jeanne and I never gave Phillip permission to do a number of the things he did. Regarding yourself, as you know the trust was really lost when you and Sharon moved into no 27 permanently rather than the 8 weeks I had given permission for whilst the water leak was fixed in the lower Flat. Then you both arranged with Phillip for the lower Flat to be split into two and one part to be rented out to a tenant that I had also not given permission for as I was not asked. That was because you knew I would have said No as the arrangement always was that the lower Flat was staff accommodation so that you were directly under the office for security reasons and because you had the dogs which I didn’t want in the Chalets.*

I am now expected to pay Council Tax of £1800 + for you at No 27 and £1800 + for the tenant in the Lower Flat even though I never wanted a tenant in there and further when for some reason it is still listed in your name. I do not intend to pay either of the Council Tax Bills.” (Below this is referred to as the “Number 27 issue”).

- “*Also it has come to light in the internal investigation that you and Phillip had instigated a policy around 2018 that I had again never given permission for that once each chalet became free it would be gutted and new wooden floors put down, redecorated, all furniture gone (that I had picked myself) and all the electrics rewired and redone throughout and all that expenditure (that I had not authorised) then charged to Tithe Barn. Andy Brown himself was paid between*

£40-50 thousand pounds for the electric work for this and yet when something costs that much it is not up to Phillip, you or anyone else to approve that as it was not Phillips or your money. Apparently according to Andy Brown it was in order to increase the rents for the chalets but again this was something Phillip decided to do and was not something I knew about until it has all come to light recently. You were well aware that I did not know about some of these things but went along with it as if Phillip was in charge of my company which he never was.” (Below referred to as the “Chalet Refurbishment and Rent issue”).

- *“You also used the Tithe Barn card in my name which I did not know about until going through the bank statements over the last few weeks.” (Below referred to as the “Bank Card issue”).*
- *“Another example is that I had said No to Laura Dos Santos as a tenant but you did not accept my decision as the owner and your employer and you and Phillip decided to have not one but two chalets in her name.” (Below referred to as the “Dos Santos issue”).*
- *“There are many more examples where your loyalties were not to me as your employer but to Phillip.”*
- *“Further, you knew that due to my own previous poisoning from pesticides and health effects that I did not want pesticides used on site. That was my policy and yet you were using wood treatment in the garage recently (which is a pesticide) when you knew I always try and get untreated wood and/or use alternatives to wood treatment such as linseed oil. You told Georgina “its going in my garden” but it isn’t your garden, as this is my site and I did not want you to remain in no 27 which was something you had agreed with Phillip not me. And you are only paying £125 for rent, when I did not agree that either as that was Phillip.” (Below referred to as the “Wood Treatment issue”).*
- *“Considering everything that has happened and the fact that the trust was broken quite some time ago then I am terminating yours and Sharon’s employment with Tithe Barn and would ask that you vacate No 27 as soon as possible.”*

- *“I am not well and neither is Jeanne and so do not want to get embroiled in arguments over this as this is my site, my company and my business and I just want to start with a clean slate now that Phillip has already gone considering all that he was doing unknown to me until recently.”*

20. Each of the Number 27 issue, the Chalet Refurbishment and Rent issue, the Bank Card issue, the Dos Santos issue and the Wood Treatment issue is dealt with further below. However, it is plain from this letter that Mr Tweedale’s dismissal was in large part a result of the breakdown of the relationship between Mr Raymond Downs and Mr Phillip Downs.
21. On 10 May 2022 a second letter was delivered to Mr Tweedale (58-59). This was signed by Mr Raymond Downs. It was much shorter than the letter of dismissal. It confirmed the dismissal and the reasons for it. It referred to *“a number of reasons for your dismissal and which amount to gross misconduct and gross breach of trust and integrity.”* The reasons cited were more or less those set out in the letter of dismissal with one important change and one additional charge. The change was this letter dealt with the Dos Santos issue in a different way. In the dismissal letter of 27 April 2022 Mr Raymond Downs had relied on Mr Tweedale having disobeyed his instruction not to accept Mrs Dos Santos as a tenant. As is explained in paragraph 36 below, Ms Downs had since established (on 4/5 May 2022) that Mrs Dos Santos had sublet the properties. No doubt because of that discovery, this second letter changed the reason for the dismissal after the event:

“In 2020 arranging and presiding over illegal subletting on my site that not only did I not give permission for but I had firmly said no to when you had asked me about it at the time.”

There was also one additional charge:

“Over a number of years failing to provide numerous tenants with their tenancy agreements which you had been in charge of providing. This is still being investigated.” (Below referred to as the “Tenancy Agreements issue”.)

22. On 8 June 2022 Mr Raymond Downs wrote to Mr Tweedale (76-79). This letter throws further light on Mr Raymond Downs’ reason for dismissing Mr Tweedale. The letter included this, in response to Mr Tweedale’s question *“I will also ask WHY do you keep bringing Philip into this? The situation is between you and I surely?”* (74):

“Further, the reason Phillip is involved in this is because you were agreeing a number of things together and so it does involve both of you for some of it. As said in my letter of 27th April 2022” (the letter dismissing Mr Tweedale) “there are many examples where your loyalties were with Phillip, the company accountant, and not me as your employer and the owner. Even now - despite the fact that Phillip has wrongly taken considerable amounts of money from my company over and above what he was supposed to be taking (as first uncovered by my business partners in Torksey John and Jane Mannion who Phillip has wrongly taken tens of thousands of pounds from), and further Phillip has wrongly taken my identity at the bank and had control “as me” of all my Natwest bank accounts unbeknownst to me until it was uncovered recently with the bank who have told me to report it as identity fraud - you are still trying to support Phillip in your comments. It is wrong what Phillip has done and I will take whatever actions are necessary with my business partner John, the bank and others.”

23. In the letter of 27 April 2022 dismissing Mr Tweedale, Mr Raymond Downs had referred to an investigation. It appears that Mr Raymond Downs had asked Ms Downs to investigate how Mr Phillip Downs had been running the Company (see paragraph 26 of Mr Raymond Downs’ statement in possession proceedings later brought against Mr and Mrs Tweedale, at 161). From that, the enquiry widened to Mr Tweedale’s part in what had happened. Mr Tweedale has not, to the Tribunal’s knowledge, been given a report from any such investigation nor has such a report been provided to the Tribunal. In looking at the reasons for the dismissal, the Tribunal must rely on other evidence before it. Apart from Mr Tweedale’s dismissal being in large part the result of the breakdown of the relationship between Mr Raymond Downs and Mr Phillip Downs, the letter of dismissal raised a number of specific issues.

24. The Number 27 issue

25. At the beginning of 2020 Mr and Mrs Tweedale moved from the ground floor flat in the main office building into smaller accommodation in chalet 27 whilst damage to the ground floor flat caused by a water leak was repaired. It was intended by Mr Raymond Downs and, at first, Mr Tweedale, that the arrangement would be temporary. However, the Tweedales did not move back. This led Mr Raymond Downs to dismiss Mr Tweedale summarily on 29 August 2020 (see paragraph 18 above). Mr Tweedale was reinstated on 31 August 2020, apparently to give him a second

chance. It seems that Mr Raymond Downs raised the subject, together with the allied refurbishment and reletting of the ground floor flat to another tenant, with Mr Tweedale on several subsequent occasions. However, the Tweedales did not move and remained in chalet 27. Mr Phillip Downs appears to have given tacit, if not express, approval to the move, refurbishment and reletting and rental arrangements. The refurbishment and reletting of the flat and the rental arrangements were all within Mr Phillip Down's authority. Mr Raymond Downs took no further action on the subject until he dismissed Mr Tweedale on 27 April 2022. Having dealt with the issue in the way it was dealt with in 2000, it is surprising that it was raised as a ground of dismissal some 20 months later. Although there was nothing to prevent Mr Raymond Downs raising it in the reasons for dismissal, there had been no new industrial wrongdoing by Mr Tweedale in this respect.

26. The Chalet Refurbishment and Rent issue

27. Ms Downs expands on this subject in her statement (WS 42):

“The Respondent also discovered that the Claimant had arranged with the then company accountant Phillip Downs, again without my father's knowledge or consent, to essentially completely refurbish and rewire each chalet whenever a tenancy came to an end. The cost of those works – just in relation to the electrician's costs alone and without factoring in all other costs – came to tens of thousands of pounds and my father was neither consulted nor informed of this huge expense.”

28. This is an allegation that Mr Phillip Downs and (to a lesser extent given their respective roles) Mr Tweedale did not consult Mr Raymond Downs on this subject before exercising the power he had, by his actions, invested in them to run the site. The fact that Mr Raymond Downs, in retrospect, does not like the decision that was made, does not mean they were not authorised to make it. On the evidence they were. Again, there is no industrial wrongdoing on Mr Tweedale's part in any of this. This is one of several examples where Mr Raymond Downs, having created the management structure he had, subsequently disliked what had been done. Mr Raymond Downs has then visited the consequences on Mr Tweedale who was often only partly, if at all, responsible for what had happened.

29. The increase in rentals appears to have been an initiative by Mr Philip Downs as a makeweight for improving the chalets.

30. The Bank Card issue

31. Mr Tweedale's evidence is that he was given permission to use a Company bank card (it seems in Mr Raymond Downs' name) by both Mr Raymond Downs and Mr Phillip Downs. Mr Raymond Downs implicitly disagrees that he gave such permission in the letter of dismissal. (See the fourth bullet in paragraph 19 above.) The Tribunal accepts that Mr Phillip Downs gave Mr Tweedale permission and supplied the PIN.

32. Whatever the rights and wrongs of using a card in someone else's name, this is common practice for expenditure on behalf of a Company. The Tribunal does not have to decide whether Mr Raymond Downs had given direct permission to Mr Tweedale to use this card. Over a long period of time Mr Raymond Downs had entrusted matters of this nature to Mr Phillip Downs who, in turn, had implied authority to authorise Mr Tweedale to use the card for Company expenditure. There was no industrial wrongdoing in Mr Tweedale accepting that authority and incurring expenditure on behalf of the Company, as he did. Mr Tweedale used the card and returned it with receipts to Mr Phillip Downs.

33. At pages 80-89 are bank statements, which the Tribunal understands record the transactions concerned. The last was on 23 December 2019, over two years before Mr Tweedale's dismissal. If it is the case that it was not until over two years later that Mr Raymond Downs discovered this, it further demonstrates the extent to which he had delegated the running of the Company's financial affairs to Mr Philip Downs.

34. The Dos Santos issue

35. In the early 2000s (around 2000-2004) the Company had an unsatisfactory experience of subletting. A number of chalets were let in block to a third party organisation, which, in turn, had sublet at a mark up to individual tenants. A Mrs Laura Dos Santos was involved in some way. It seems to be common ground that Mr Raymond Downs had originally agreed to the arrangement but ultimately was unhappy with it. Consequently, the arrangement was terminated.

36. In 2020 Mrs Dos Santos approached Mr Tweedale about a tenancy or tenancies. There is some account that Mr Tweedale asked Mr Raymond Downs about this and Mr Raymond Downs said "No" (see Mr Raymond Downs' response to the claim at 34 and his letter to Mr Tweedale of 16 May 2022 at 71.) From the letter of dismissal, however, it seems clear that what Mr Raymond Downs said "No"

to was Mrs Dos Santos as a tenant (see the fifth bullet point in paragraph 19 above). Subletting was not the issue at the time of Mr Tweedale's dismissal. In any event, Mr Tweedale consulted with Mr Philip Downs. Subsequently, Mr Tweedale rented a chalet to Mrs Dos Santos and Mr Phillip Downs rented two more to her. It later transpired that Mrs Dos Santos had sublet the chalets at a mark-up. This, however, was discovered by Ms Downs after Mr Raymond Downs had dismissed Mr Tweedale. (As to this, see the letter from one of the sub tenants, Mr Oscar Ruiz Diaz at 101-102. That letter confirms that Ms Downs uncovered the sub-letting on 4/5 May 2022, after Mr Tweedale had been dismissed. A letter from another sub tenant, Mr Raul Guardiola Moreno at 103 confirms the same point.) There is no credible evidence that Mr Tweedale consented to any subletting arrangement.

37. The bare facts, therefore, are that Mr Phillip Downs and Mr Tweedale, to whom Mr Raymond Downs had jointly delegated the running of the site, chose to give tenancies to Mrs Dos Santos when Mr Raymond Downs had said "No". Mr Tweedale, probably together with Mr Philip Downs, chose to ignore Mr Raymond Down's instruction on the subject. This became a subletting issue only after Mr Tweedale's dismissal, when Mr Raymond Downs appears to have reached the conclusion that Mr Tweedale knew about the subletting. Subletting, rather than the tenancy, thereafter, became part of the narrative of the reasons for dismissal. (See, for example, paragraph 43 of Mr Raymond Downs statement in possession proceedings later brought against Mr and Mrs Tweedale at 165.)

38. The Wood Treatment issue

39. The Tribunal heard and saw no more on the subject in the evidence before it.

40. The Tenancy Agreements issue

41. This was not expressed to be a reason for the dismissal in the dismissal letter of 27 April 2022. Rather, it surfaced in the letter of 10 May 2022. Nevertheless, it is convenient to deal with it briefly here. As far as the Tribunal can deduce, this arose out of two separate sets of allegations.

42. Ms Downs makes an allegation about the fabrication of tenancy agreements in paragraph 92 of her witness statement. There were some tenancy agreements signed by Mr Tweedale and dated 1 May 2022. That was, of course, after Mr Tweedale had been summarily dismissed on 27 April 2022. The Company says this

was an unauthorised act. However, the evidence is that Mr Tweedale had prepared these before 27 April 2022 but dated them to take effect on 1 May 2022. The explanation is straightforward and there is no industrial wrongdoing in that.

43. Second, there is a more general allegation by Ms Downs in her witness statement (WS 40):

“Over a number of years, the Claimant had also failed to provide numerous tenants with their tenancy agreements and which he had been in charge of providing as it was part of his role.”

44. By way of example Ms Downs provides copies of two expired agreements (93-96). The Tribunal is not, evidentially, able to verify whether these were renewed or not. However, it is possible that Mr Tweedale had omitted to renew or provide some tenancy agreements. No doubt this would have been easily remedied if it had been raised with him prior to his dismissal.

45. Post dismissal investigations

46. After the dismissal it seems probable that the Company discovered, either through its own resources or on advice, that it might be in difficulty with the dismissal from a legal perspective. It sought to address this by further investigations to try to establish other pre-dismissal industrial wrongdoing by Mr Tweedale. This would enable the Company to argue, as it does (see Ms Downs WS 44 and 126), that even if there were shortcomings with the fairness of the dismissal, there had been sufficient industrial wrongdoing to have justified a fair dismissal in any event. In this respect, there were the investigations that uncovered the sub-letting and the Tenancy Agreements issue. However, the main thrust of the post dismissal investigations took the shape of a painstaking cataloguing of defects with the chalets to demonstrate that Mr Tweedale had grossly neglected his site maintenance duties over a long period. A bystander might find this somewhat ironic. One of the reasons cited for dismissing Mr Tweedale was the expensive refurbishment of chalets on reletting. Further, Mr Raymond Downs had clearly supported Mr Tweedale's return to work on site after Mr Tweedale's stroke in September 2017, despite his reduced ability to perform his role.

47. In any event, the Company has provided voluminous material on the subject, all of which the Tribunal has viewed and considered. It is inappropriate to record the material in detail. The Tribunal's conclusions are these.

- The 12 video clips do, indeed, record a grim picture. Presumably, if there are 24 chalets/mobile homes, the 12 video clips represent half the estate. The responsibility for neglect at this level lies squarely with the Company although, clearly, it is entitled to consider disciplinary action against any employee responsible for the state of affairs.
- There are several common themes. These are mould (by far the most serious), a lack of heating, a lack of extractors, faulty electrical practice and broken handles on window and door openings.
- Mould is a result of excess moisture for which there are many causes. This is such a common feature in the properties that the Tribunal would venture that there is a structural problem of some sort. Not only is the site prone to flooding but there is some support for a structural problem in Mr Tweedale's evidence. Resin had been applied to the lower half of the chalets at some stage in the past (probably around 2008) and this could well have affected air circulation. Ms Downs appeared to be unaware of this. This was probably not aided by long term occupation of holiday properties. Properties of this sort are seldom designed for long term occupation. In short, the cause of the mould is unlikely to be a maintenance issue. The Tribunal noted that, in one of the chalets where the tenant appeared to be fastidious about controlling the mould, there was no mould.
- The Company's case is that Mr Tweedale was solely responsible for inadequate heating in many of the chalets. The chalets originally had night storage heating, the cost of which was absorbed in the rental. On the balance of probability this was progressively replaced, either on Mr Raymond Downs' or Mr Phillip Downs' instruction from 2018 onwards because it was costing too much to run. Oil heaters were supplied as an alternative. These were powered by electricity paid for by cards purchased from the Company. The Tribunal does not accept Mr Raymond Downs' assertion that he knew nothing of this. The proposition that Mr Tweedale was solely

responsible is surprising. Mr Tweedale would have no incentive to make the changes. It was the Company's profit that was at stake.

- The lack of extractors and the electrical faults were not a maintenance issue for Mr Tweedale to repair. Mr Tweedale was not an electrician. It could be said that Mr Tweedale was dilatory in securing the services of an electrician to remedy the defects. However, this is improbable because, again, he had nothing to gain by doing so. More likely, he was told to have an eye to the budget.
- As far as broken handles on openings were concerned, these could have been replaced as a maintenance matter. The Company seems to have fitted openings prone to the fault. However, there is no evidence to support these faults pre-dating Mr Tweedale's dismissal.
- The video clips recording conditions in the chalets are of visits in October 2022. Whilst Ms Downs apparently viewed chalets before that date, this was around six months after Mr Tweedale's dismissal. The Tribunal accepts Mr Wicken's evidence that some of the issues must have pre-dated Mr Tweedale's dismissal, but others might not.
- The Company has produced 6 letters from various of the chalet occupiers making specific complaints about the standard of Mr Tweedale's maintenance work (101-103 - penultimate paragraph, 170-176). The author of the letter at 103 had clearly written his letter having had sight of the letter at 101-102 (he says so). Apart from this and other issues about provenance, it is inevitable that a site such as this will have some tenants who are dissatisfied about some aspect of maintenance. These letters are scant evidence of the general neglect the Company seeks to establish. To the contrary, given the Company's efforts to drum up support for its cause amongst the tenants, the number of complaints points in a different direction. (Apparently there are some 43 people on site - Ms Downs WS 118.) The letters

are contradicted by one supporting Mr Tweedale (230).

- In summary, the Company has failed to establish that Mr Tweedale had grossly neglected his site maintenance duties over a long period. It is by no means clear that Mr Tweedale had neglected his duties at all, especially as there is no evidence of any such issue at all in the preceding 26 years. However, if he had done so, the obvious course of action would have been to discuss the matter with him and agree a plan of remedial action. This opportunity was denied him by the Company's actions. There is nothing approaching evidence of a neglect of duties that, within a reasonable band of responses, would have given grounds for a fair dismissal, let alone a summary dismissal for gross misconduct.

48. As mentioned above, the cataloguing of Mr Tweedale's maintenance shortcomings was not the only subject of post termination allegations. There were also the subletting spin-off from the Dos Santos issue and the Tenancy Agreements issue. Further, in Ms Downs' witness statement, she makes two allegations of theft (WS 93 - electricity prepayment cards and 94-95 - specific items). These two allegations are serious but unsubstantiated. In contrast to the other issues, they are about events that occurred after the dismissal. Their relevance is to any assessment of what might have happened had the employment relationship continued. However, since they would not have occurred if the employment relationship had continued, they will not be dealt with further in this Judgment.

49. It is quite clear that, after Mr and Mrs Tweedale were dismissed on 27 April 2022, there was a complete breakdown in relations between them on the one hand and Mr Raymond Downs and Ms Downs on the other. This was exacerbated because Mr and Mrs Tweedale did not move out of chalet 27 until they were evicted on 16 September 2022. This breakdown was abundantly clear during the hearing and from some of the contents of the bundle. It is understandable in the circumstances but has resulted in a total failure of objectivity on both sides. The behaviour of neither side in this respect does them any credit.

50. The Tribunal understands that Mr Tweedale received Universal Credit.

APPLICABLE LAW

51. Section 94 of the Employment Rights Act 1996 (the “ERA”) provides an employee with a right not to be unfairly dismissed by his employer. Section 98 of the ERA sets out provisions for determining the fairness or otherwise of a dismissal. So far as it is relevant it provides:

“98 General

(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-”....

“(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.”

52. The test for a fair conduct dismissal is well established. In a case where an employee is dismissed because the employer suspects or believes that he or she has committed an act of misconduct, in determining whether that dismissal is fair or unfair an employment tribunal has to decide whether the employer who dismissed the employee on the ground of the misconduct in question entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements. First, the fact of that belief must be established, that is that the employer did believe it. Second, the employer must have had in his mind reasonable grounds upon which to sustain that belief. Third, the employer at the stage at which he formed that belief on those grounds, must have carried out as much investigation as was reasonable in all the circumstances. The first

of these elements goes to the reason for dismissal, which it is for the employer to show. Otherwise, the burden of proof is neutral.

53. Added to this test is the requirement that the sanction imposed by the employer is within the band of reasonable responses.
54. Implicit in all this is that it is not for the tribunal to substitute its view for that of an employer provided that the employer's view falls within the band of responses which a reasonable employer might adopt.
55. Sections 122(2), 123(1), (4) and (6) and 124(1) and (1ZA) of the ERA respectively provide:

"122 Basic award: reductions"

"(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) 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."

"123 Compensatory award"

(1) Subject to the provisions of this section and sections 124, 124A and 126, 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 by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland."

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

"124 Limit of compensatory award etc

(1) The amount of-"

"(b) a compensatory award to a person calculated in accordance with section 123,

Shall not exceed the amount specified in subsection (1ZA).

(1ZA) The amount specified in this section is the lower of £105,707, and

(b) 52 multiplied by a week's pay of the person concerned."

56. Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (the “TULRCA”), so far as it is relevant, provides:

“207A Effect of failure to comply with Code: adjustment of awards

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(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%”

57. Schedule A2 of the TULRCA includes the jurisdiction of unfair dismissal and the ACAS Code of Practice 1 Code of Practice on Disciplinary and Grievance Procedures (2015) (the “Code”) is a relevant code for the purposes of section 207A(2)(a) of the TULRCA.

58. The Tribunal was referred to *W Devis & Sons Limited v Atkins* [1977] ICR 662.

CONCLUSIONS

59. Unfair Dismissal

60. It is for the Company to show a permissible reason for the dismissal and it puts forward “conduct” under subsection 98(2)(b) of the ERA.

61. Often the reason (or, if more than one, the principal reason) for a dismissal is clear. In this case it requires some unpicking. On the evidence, the principal reason for Mr Raymond Down’s dismissal of Mr Tweedale was that Mr Raymond Downs wanted to start afresh after Mr Phillip Downs’ association with the Company had ended. This is explored above but, for example, the letter of dismissal dated 27 April 2022 concluded: *“I am not well and neither is Jeanne and so do not want to get embroiled in arguments over this as this is my site, my company and my business and I just want*

to start with a clean slate now that Phillip has already gone considering all that he was doing unknown to me until recently.”

62. Mr Raymond Downs wanting to start afresh after Mr Phillip Downs' association with the Company had ended is not a conduct matter for Mr Tweedale. It is the case that there was more than one reason for the dismissal. However, the essential ingredient in the dismissal was that Mr Tweedale was seen by Mr Raymond Downs as someone whose *“loyalties were with Phillip, the company accountant, and not me as your employer and the owner.”*
63. The Company has, therefore, failed to show a reason related to conduct for the dismissal. It puts forward no other reason. Therefore, the dismissal is unfair.
64. If the Tribunal was to be wrong about that and the reason (or, if more than one, the principal reason) for the dismissal was the other reasons set out in Mr Raymond Downs' letter dismissing Mr Tweedale of 27 April 2022, the Company would have shown a reason related to Mr Tweedale's conduct for the dismissal. Since this path would, nevertheless, lead to the same conclusion of unfair dismissal, it is proportionate for the Tribunal to explore it.
65. The misconduct would be the Number 27 issue, the Chalet Refurbishment and Rent issue, the Bank Card issue, the Dos Santos issue and the Wood Treatment issue.
66. The Tribunal would have considerable reservations about whether Mr Raymond Downs knew about the Chalet Refurbishment and Rent issue or the Bank Card issue. Otherwise, however, there would be no evidence on which the Tribunal could conclude that Mr Raymond Downs did not believe that Mr Tweedale was guilty of the alleged misconduct in question.
67. The Tribunal would then turn to whether Mr Raymond Downs had reasonable grounds for sustaining that belief. The question would be, was it within the band of reasonable responses for Mr Raymond Downs to conclude, on the evidence before him, that Mr Tweedale had committed the misconduct alleged? The Tribunal would examine each act of alleged misconduct in this respect.
68. The Number 27 issue (paragraphs 24-25 above)
69. It is the case that Mr Raymond Downs had seen Mr Tweedale's continued occupation of Number 27 as a disciplinary issue in 2020. On the facts it would seem that it was within the band of reasonable responses for Mr Raymond Downs to conclude that Mr Tweedale had committed an act of misconduct in this respect at that time.

The difficulty with this from the Company's point of view is that Mr Raymond Downs had formed that view and dismissed Mr Tweedale on 29 August 2020, only to reinstate him 2 days later. This was some 20 months before the dismissal with which the Tribunal is concerned. There is no subsequent identifiable misconduct by Mr Tweedale and the 20 month gap indicates that Mr Downs, however reluctantly, put up with the state of affairs. This also applies to the refurbishment and letting of the flat and the rental arrangements, all of which were within Mr Phillip Downs' authority in any event. Although there is no blanket rule that past misconduct, in respect of which disciplinary action has been taken, may not be taken into account subsequently, that is not the same as it being within the band of reasonable responses for Mr Raymond Downs to resurrect it as fresh misconduct.

70. The Chalet Refurbishment and Rent issue (paragraphs 26-29 above)

71. The proposition that Mr Raymond Downs had no inkling that this had been underway for four years since 2018 on the site on which he lived and in the Company that he supposedly oversaw is one that the Tribunal finds improbable. Even if it did not, it is quite clear from the facts that Mr Raymond Downs had delegated responsibility for this sort of decision to Mr Phillip Downs. There were no grounds on which it was within the band of reasonable responses for Mr Raymond Downs to conclude that Mr Tweedale had committed an act of misconduct in this respect.

72. The Bank Card issue (paragraphs 30-33 above)

73. Again, it is improbable that Mr Raymond Downs did not know about this. Even if he did not, he had delegated responsibility for this sort of decision to Mr Phillip Downs. There were no grounds on which it was within the band of reasonable responses for Mr Raymond Downs to conclude that Mr Tweedale had committed an act of misconduct in this respect.

74. The Dos Santos issue (paragraphs 34-37 above)

75. To the extent this figured in the reasons for dismissal, it was because Mr Raymond Downs had answered "No" to a question from Mr Tweedale about whether the Company should let to Mrs Dos Santos. On a balance of probability Mr Tweedale, in consultation with Mr Phillip Downs, disregarded an instruction from Mr Raymond Downs that they should not let to Mrs Dos Santos. No doubt Mr Tweedale acted in what he considered to be the best interests of the Company and with Mr Phillip Downs' agreement.

Notwithstanding, it was within the band of reasonableness for Mr Raymond Downs to conclude that Mr Tweedale had committed an act of misconduct in this respect.

76. The Wood Treatment issue (paragraphs 38-39 above)

77. This does not seem to have figured to any great extent. In the absence of persuasive evidence of disobedience there are no grounds on which the Tribunal could conclude that it was within the band of reasonable responses for Mr Raymond Downs to conclude that Mr Tweedale had committed an act of misconduct in this respect.

78. Summarising at this point. If the Tribunal was going down the route that the reason for the dismissal was not Mr Raymond Downs wanting to start afresh after Mr Phillip Downs' association with the Company had ended, but the other reasons set out in the dismissal letter of 27 April 2022, it would have found one matter of misconduct substantiated having applied the band of reasonable responses test. Mr Raymond Downs would have had reasonable grounds for sustaining the belief that Mr Tweedale disregarded Mr Raymond Downs' "No" to letting to Mrs Dos Santos.

79. The Tribunal would then turn to the investigation. The test is, had the employer, at the stage at which it formed its belief in the misconduct in question, carried out as much investigation as was reasonable in all the circumstances?

80. The Code, as it says, provides basic practical guidance and sets out principles for handling disciplinary situations in the workplace. Employment tribunals take the Code into account when considering relevant cases, of which this is one.

81. The Code does not envisage that an investigatory meeting be held with an employee, whose conduct is being investigated, in all cases. What the Code stresses is that it is important to carry out necessary investigations. In appropriate cases this may be confined to the collation of evidence for use at any disciplinary hearing. Here, of course, there was no disciplinary hearing. However, for the moment the Tribunal's focus is on the investigation. The questions are, was this an appropriate case and was there as much investigation as was reasonable in the circumstances? The reasonable band test applies. In other words, there is a range of reasonable possibilities and provided the employer acts within that range, it is not for the Tribunal to intervene.

82. This was a small business, the ultimate proprietor of which was in poor health. Some allowance would have to be made for that. Neither Mr Tweedale nor the Tribunal has seen any investigatory report. What seems to have happened is that Ms Downs undertook some sort of investigation at the instigation of Mr Raymond Downs. Prior to the dismissal, this appears to have revealed that Mr Tweedale had allowed Mrs Dos Santos a tenancy. This was not, however, a case in which the employer, at the stage at which it formed its belief in the misconduct in question, had carried out as much investigation as was reasonable in all the circumstances. To do so it would have been reasonable to have held an investigatory meeting with Mr Tweedale to establish the facts. For example, there was clear evidence during the hearing that Mr Tweedale had consulted with Mr Phillip Downs and had then given Mrs Dos Santos one tenancy. Mr Phillip Downs had also given Mrs Dos Santos two additional tenancies. Ms Downs did not appear to be aware that Mr Phillip Downs had been consulted and had overseen two of the tenancies. An investigatory meeting with Mr Tweedale would have created the space in which to form a considered view of the evidence before deciding whether to take it to a disciplinary hearing, let alone moving straight to disciplinary action.
83. This was not an exceptional case in which the facts were so clear or the wrongdoing so obvious that an investigation meeting was not necessary. To the contrary, it was a case in which the omission of an investigatory meeting took the investigation outside the band of reasonable responses. This would render the dismissal unfair even if the Tribunal was to be wrong about the principal reason for the dismissal.
84. If the Tribunal had concluded that the Company had shown a conduct reason for the dismissal, but the dismissal was unfair because of a failure in the investigatory process, it would be required to consider what would have happened had the Company carried out a reasonable investigation. The Tribunal would take account of several factors in carrying out this exercise.
85. First, the part played by the Dos Santos issue in the dismissal letter appears to have been small. The relevant content of the letter is set out above but bears repeating for convenience.
- *“Another example is that I had said No to Laura Dos Santos as a tenant but you did not accept my decision as the owner and your employer and you and Phillip decided to have not one but two chalets in her name.”*

- *“There are many more examples where your loyalties were not to me as your employer but to Phillip.”*

86. Aside from the obvious point that this supports the Tribunal’s primary conclusion that the principal reason for the dismissal was Mr Tweedale’s association with Mr Phillip Downs, two conclusions can be drawn. First, this is expressed to be an example of, presumably, misconduct. It is not expressed to be a stand-alone reason for dismissal. Second, it forms a very small part of the letter. Since the dismissal, it has taken on more significance as the Company has misleadingly attempted to portray it as a subletting issue.
87. Second, the Tribunal notes that the relationship between Mr Raymond Downs and Mr Tweedale was longstanding and had, for many years, been good. This, no doubt, was why Mr Raymond Downs had changed his mind about dismissing Mr Tweedale in 2020. It does not seem to the Tribunal that Mr Raymond Downs would have dismissed Mr Tweedale in 2022 on the ground that he had let a property to Mrs Dos Santos when Mr Raymond Downs had said “No”. The emphasis on this and the change of focus to subletting has come post dismissal as a damage limitation exercise by the Company.
88. The Tribunal’s conclusion, therefore, would be that there is no chance that a fair investigation solely on the Dos Santos issue would have resulted in a fair dismissal. Looked at the other way around, in those circumstances, the Company would have imposed a sanction short of dismissal on Mr Tweedale.
89. In conclusion, were the Tribunal to be wrong about the reason for the dismissal, its conclusion would have been that there was an unfair dismissal in any event.
90. The Tribunal is also required to consider the issues of conduct and contribution as set out in sections 122(2) and 123(6) of the ERA. Although the tests are different, decisions of the higher courts have brought them closer together for all practical purposes in recent years. Before a Tribunal can make deductions under these sections, it must find that there was conduct having the characteristic of blameworthiness or culpability. On the evidence, the Dos Santos issue saw Mr Tweedale going against an instruction by Mr Raymond Downs in that he let a property to Mrs Dos Santos when Mr Raymond Downs had said “No” to such a letting. Notwithstanding that Mr Tweedale consulted Mr Phillip Downs and thought he was acting in the best interests of the Company, he would have known he was disobeying Mr Raymond

Downs' instruction. The Tribunal finds that the dismissal was, to an extent, caused or contributed to by that action and it is just and equitable to reduce any compensatory award by 25% as a result.

91. As far as section 122(2) of the ERA is concerned, the test is whether the Tribunal considers that any conduct of Mr Tweedale before the dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent. Invariably this produces the same percentage reduction as the test in section 123(6) of the ERA. The Tribunal notes Mr Tweedale's long service and the manner of his dismissal but does not consider that sufficient to differentiate between the treatment under sections 122(2) and 123(6) of the ERA. Accordingly, the Tribunal finds that it is just and equitable to reduce any basic award by 25%.

92. The Code

93. These proceedings include a claim of unfair dismissal. Section 207A of the TULRCA applies. On the evidence, there was a failure to follow basic requirements of the Code. The following are examples only. There were other identifiable failings. The Tribunal has seen no written disciplinary procedure. Mr Tweedale was not informed of the disciplinary charges against him prior to his dismissal and had no opportunity to put his case. These were unreasonable failures to comply with the Code. The Tribunal recognises that this is a small company and that Mr Raymond Downs was not in good health. Nonetheless, that does not justify the complete disregard displayed in this case for the common sense principles of natural justice set out in the Code. The Tribunal considers it just and equitable to increase any award it makes to Mr Tweedale by the maximum of 25% to reflect these failures.

94. Wrongful dismissal

95. The question for the Tribunal is, on the balance of probabilities, did Mr Tweedale's conduct amount to a repudiatory breach of contract such as to justify the Company in terminating it summarily. Apart from the fact that the Tribunal has found that the reason for Mr Tweedale's dismissal was not his misconduct as such, on the evidence the Tribunal has seen, Mr Tweedale's behaviour did not amount to a repudiatory breach in any event.

96. Ordinarily a refusal to obey a lawful and reasonable instruction, in the absence of any other factor, would amount to a repudiatory breach. On the evidence, the Company relies on the Dos Santos issue as such a repudiatory breach. That saw Mr Tweedale going against an instruction by Mr Raymond Downs in that he let a

property to Mrs Dos Santos when Mr Raymond Downs had said “No” to such a letting. However, this must be seen in the light of mitigating circumstances. First, it is clear as explained above that this did not figure to any great degree in the dismissal letter of 27 April 2022. The emphasis came later when a misleading attempt to expand the issue to one of subletting was made to “big” it up. The Company, therefore, does not seem to have attached much weight to it at the point of dismissal. Second, Mr Tweedale consulted Mr Phillip Downs on the subject and they obviously decided to go ahead together in circumstances where they had been left to run the Company between them. Third, the Tribunal has accepted that Mr Tweedale believed he was acting in the Company’s best interests at the time. In all the circumstances, there was no repudiatory breach of contract.

97. Accordingly, Mr Tweedale was wrongfully dismissed.

98. Remedy

99. *Wrongful dismissal*

100. Mr Tweedale was entitled to 12 weeks’ notice under the provisions of section 86 of the ERA. Mr Tweedale is awarded £5,832 in this respect. The calculation is:

Net weekly pay of £486 (being the agreed figure of £471 to which is added a £15 weekly pension contribution [$£780/52$])
x 12 weeks = £5,832.

101. *Unfair dismissal*

102. Mr Tweedale does not ask that a reinstatement or re-engagement order be made.

103. Mr Tweedale is entitled to a basic award of £11,991 calculated as follows:

Agreed figure of £15,988 less a reduction of 25% under section 122(2) ERA ($£3,997$) = £11,991.

104. In calculating the compensatory award payable to Mr Tweedale, the Tribunal faces some unusual circumstances. The evidence is that, after his stroke in September 2017, Mr Tweedale was no longer fit for work. Notwithstanding, Mr Raymond Downs had made adjustments (see paragraph 15 above) so that Mr Tweedale could continue in post and gradually work back into the job, at least to some extent. That being the case, had there not been an unfair dismissal or some other unforeseen event, Mr

Tweeddale would probably have continued in post until he chose to retire. Mr Tweedale identifies 2032 as his intended retirement date. On the face of it, therefore, Mr Tweedale has suffered 10 years loss of earnings. However, the Tribunal does not consider that to be just and equitable in all the circumstances. First, Mr Tweedale has not sought to mitigate his loss by finding other employment. Mr Tweedale's evidence is that he has not done so on medical grounds. That, however, must be weighed against the ability he showed to do some work on the site. Second, although the relationship with Mr Raymond Downs had been long standing and harmonious, this had clearly taken a turn for the worse in 2020 over the Number 27 issue. That issue had left Mr Raymond Downs much less well disposed towards Mr Tweedale. There is at least a possibility that the employment relationship would have ended fairly within the 10 years. Taking these factors into account the Tribunal awards 3 years loss of earnings to Mr Tweedale (inclusive of the notice period). The calculation is:

Net weekly pay: £486

156 weeks x £486 = £75,816

Less notice pay of £5,832 = £69,984

Add uplift of 25% (section 207A of the TULRCA) (£17,496) =
£87,480

Less contributory fault of 25% (section 123(6) of the ERA)
(21,870) = £65,610

105. To this is added the sum of £500 awarded for loss of statutory rights adjusted as follows. It is uplifted by 25% (section 207A TULRCA) (£125) to £625 and the £625 is reduced by 25% (£156.25) for contributory fault to £468.75

106. The total compensatory award at this stage is, therefore, £66,078.75.

107. This must be "grossed up" to take account of taxation. The calculation is:

Basic award: £11,991 (taxable)

Damages for wrongful dismissal: £5,832 (taxable)

Compensatory award: £66,078.75 (taxable)

Total: £83,901.75

Less: Tax free sum: (£30,000 less basic award and damages for wrongful dismissal totalling £17,823 = £12,177) = £53,901.75

Gross up at a marginal tax rate of 20%

$£54,370.50/0.8 = £67,963.13$

108. The compensatory award, before application of the section 124 of the ERA statutory cap is, therefore £67,963.13. To this must be applied the cap, in this case of 52 weeks' gross pay. The calculation is:

$52 \times £635 (620 + £15 \text{ weekly pension contribution})$ £33,020

109. Mr Haines's argument on behalf of the Company included a submission that it would be just and equitable to reduce any compensatory award to Mr Tweedale to zero relying on the authority of Devis. For reasons dealt with above (see paragraphs 45-48 in particular), the Tribunal does not agree with that argument.

Employment Judge A Matthews
Date: 4 July 2023

Judgment and Reasons sent to the Parties:
7 July 2023

FOR THE TRIBUNAL OFFICE