EMPLOYMENT TRIBUNALS

Claimant: Ms J Patel

Respondent: Citygate Automotive Ltd

Heard at: Watford Employment Tribunal (In Public; In Person)

On: **29 to 31 January and 1 February 2024**

Before: Employment Judge Quill; Ms P Barratt; Mr D Sutton

Appearances

For the Claimant: Mr N Gathani, Friend

For the respondent: Ms C Jennings, Counsel

RESERVED JUDGMENT ON RE-EMPLOYMENT

(1) We decline to make an order for reinstatement (section 114 of the Employment Rights Act 1996).

(2) We decline to make an order for re-engagement (section 115 of the Employment Rights Act 1996).

REASONS

Introduction

1. We gave our liability decision, and the reasons for it, on 1 February 2024. We found that the Claimant was unfairly dismissed by Citygate Automotive Ltd (and dismissed all claims against the other respondent).

2. We explained that we had the power to make an order for reinstatement or re-engagement, and the Claimant asked that we do so. Both sides we ready to proceed, and we heard evidence and submissions.

3. We informed the parties that we would send a reserved decision on this part of the remedy decision, and that there would be a later separate hearing (on 19 March 2024) to deal with outstanding matters.

The Law

4. Remedies for a claimant whose complaint of unfair dismissal has been upheld are dealt with in sections 112 to 126 of the Employment Rights Act 1996.

5. At this particular stage of our decision making in this matter, we are considering first of all the orders that might be made under s.114 or s.115.

> 114.— Order for reinstatement.
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> (1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.
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> (2) On making an order for reinstatement the tribunal shall specify—
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> (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
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> (b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
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> (c) the date by which the order must be complied with.
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> (3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.
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> (4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—
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> (a) wages in lieu of notice or ex gratia payments paid by the employer, or
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> (b) remuneration paid in respect of employment with another employer, and such other benefits as the tribunal thinks appropriate in the circumstances.
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> 115.— Order for re-engagement.
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> (1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.
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> (2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—
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> (a) the identity of the employer,
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> (b) the nature of the employment,
>
> (c) the remuneration for the employment,

(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

6. As per s.116(2) we will only consider an order for re-engagement if we first decided that we will not make an order for re-instatement.

7. When considering whether to make an order for either re-instatement or re-engagement (which we describe collectively as “re-employment”) we have a duty under s.116 to consider three things in particular;

   a. whether the employee wants an order to be made,

   b. whether it is practicable for the employer to comply, and

   c. whether it would be just to make either type of order where the employee’s conduct caused or contributed to some extent to the dismissal.

8. We must always take all of those factors into account but we also have a broad discretion to take account of such other factors as we decide are relevant and appropriate in a particular case. As with any other judicial decision we must take into account everything that is relevant and ignore anything that is not relevant.

9. The requirements of s.117 are not relevant to the decision that we are making at this stage.

10. We first make a decision about whether to order re-employment. Having done so, we will hear further submissions about the amount payable as part of any order, or else (as the case may be) about compensation.

11. If the employee is re-instated or re-engaged by the employer following an order made by us then their continuity of employment will be preserved. If we do order re-instatement under s.114 then the order is for the employer to treat the claimant in all respects as if they had not been dismissed.

12. If making an order for re-instatement the tribunal is not ordering any changes in the contract so no changes about the contractual requirements for the work

location or for anything else. If we did think that it was not practicable for the employee to resume on the same terms as before (either work location or anything else), then that would potentially be a reason not to order re-instatement. That is, instead we might order re-engagement or else make neither order.

13. When an employee does want to be re-instated or re-engaged then the practicability or otherwise of the respondent being able to comply is a question of fact for us to determine. We must look at all the circumstances of the case and take a common-sense view based on the evidence. There is no presumption that it will be practicable and we must take into account relevant considerations based on the available evidence and submissions. The fact that it might be inconvenient for an employer to have to reemploy does not necessarily lead to a finding that it would not be practicable for the employer to have to comply with an order. That being said, a mere finding that it would not be impossible for the respondent to comply is not enough for us to decide to make such an order.

14. Since there is no presumption that re-instatement or re-engagement will be, or will not be, practicable, it follows that the respondent is not obliged to provide evidence that it is not practicable. The tribunal will make its decision based on such evidence that has been presented and that can take into account the evidence from the liability hearing as well as any specific evidence at the remedy stage.

15. Practicable means more than merely possible; it means capable of being carried into effect with success: Coleman and Stephenson v Magnet Joinery Ltd [1975] I.C.R. If an employee is not capable of starting and performing the work and that it might mean that it is not practicable.

16. If the effect of an order would be that the employer would become overstaffed then that might mean it is not practicable. The effect of the employer having hired a direct replacement for the employee is specifically addressed by sections 116(5) and 116(6).

17. The relationship between the claimant and their colleagues is usually a relevant factor. The fact that the employee might be on bad terms with one or more colleagues is not necessarily a complete barrier to an order.

    a. One factor will be whether there has been an irretrievable breakdown or whether the relationship is likely to improve.

    b. Another factor is whether the bad relationship in question would have an effect on the respondent's business. That is likely to include analysis and consideration of (for example): whether the claimant was on bad terms with somebody who would be responsible for managing him; whether he was on bad terms with somebody with whom the claimant would be expected to work closely and harmoniously with on a regular basis.

    c. The more important the relationship between the claimant and the colleague, then the less likely it is that re-employment would be appropriate where the relationship has soured.

    d. In some cases a decision that a relationship is so bad that re-instatement

is not practicable would not necessarily prevent an order for re-engagement being made.

18. Working relationships do not necessarily have to be perfect in order for there to be an order for re-employment provided the tribunal is satisfied that both parties, and especially the claimant, would be willing to work professionally with each other.

19. If there has been a breakdown of trust and confidence between employer and employee then an order for re-employment might not be appropriate. The employer does not have to provide that there has been a breakdown which meets the threshold that is necessary to demonstrate a breach of the implied term requiring trust and confidence.

20. In Kelly v PGA Tour Neutral Citation Number: [2021] EWCA Civ 559, the Court of Appeal ruled that the correct approach to practicability was that set out in United Lincolnshire Hospitals NHS Foundation Trust v Farren. In paragraph 43 of Kelly, the Court of Appeal quoted from paragraphs 40 to 42 of the EAT decision in Farren and added at paragraph 44 that the Court of Appeal considered that that approach, was the one which employment tribunals should adopt.

> 43. The way in which employment tribunals should approach the issue of practicability in this context was considered by the EAT in *Farren*. There, the employer, an NHS Trust, believed that a nurse had administered medication to patients without prior prescription, contrary to the trust's policy. The employment tribunal had accepted that the employee had administered drugs in breach of the trust's policy but considered that the employee had long service, had undertaken training and understood the importance of the policy on administration of medication and, in the view of the tribunal, the employee could be trusted to act properly in an environment other than an accident and emergency unit, given her experience, record and professional commitment. On appeal against that conclusion, the EAT held:
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> > *"40. That, however, was not the correct question for the tribunal. As the case makes clear (see Wood Group Heavy Industrial Turbines Ltd v Crossan [1998] IRLR 680, para 10, cited at para 24 above), it had to ask whether this employer genuinely believed that the claimant had been dishonest, and—per the Employment Appeal Tribunal in, 27 April 2000 , para 14 (see para 25 above)—whether that belief had a rational basis. It was, after all, this employer—not some other and certainly not the employment tribunal—that was to re-engage the claimant. The issue of trust and confidence had to be tested as between the parties in order to determine, even on a provisional basis, whether an order for re-engagement was practicable, whether it was capable of being carried into effect with success, whether it could work. The trust might have reached a conclusion as to the claimant's honesty by an impermissible route in its dismissal decision and might also have drawn the wrong inference at the rehearing, but the tribunal still needed to ask, as at the date it was considering whether to order re-engagement, whether it was practicable or just to order this employer to re-engage the claimant. It thus was the trust's view of trust and confidence— appropriately tested by the employment tribunal as to whether it was genuine and founded on a rational basis—that mattered, not the tribunal's.*
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> > *"41. We make clear that we are not saying that we find that a reengagement order was not a permissible remedy in this case. The answer did not have*

> *to be in the negative simply because the tribunal had found that a fundamental part of the substantive charge against the claimant had been made good or because it had concluded that her compensation should be reduced by a third, given her contributory conduct, or because it had refused to order reinstatement. These were all relevant considerations but were not necessarily determinative and we would not have allowed the appeal simply on those bases. In particular, we observe that stating the bare facts of a case can seem to suggest a particular answer, but the assessment of practicability for the purpose of a re-engagement order requires a far more nuanced consideration of the position; something that an employment tribunal is very much best placed to undertake. In this case the assessment undoubtedly included the claimant's long experience, her past good record and professional commitment; all matters that permissibly weighed with the tribunal. We equally do not say that the tribunal was wrong to have regard to evidence of references from other employees: we can see why an employment tribunal might not consider such evidence to be relevant, and we do not consider these were given great weight in the present case, but it is all a matter of assessment for the tribunal.*
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> *"42. What we consider the tribunal did have to do was to consider, as at that point in time, whether the trust had made good that which it said made it impracticable or unjust to order re-engagement; that it could no longer have trust and confidence in the claimant. Given the tribunal had found that the claimant had committed the act of misconduct in question, that might not seem to have been an obviously irrational position, but, as Mr Bourne accepted in oral argument, it was not the only question. The tribunal also needed to consider whether the trust had made good its case that trust and confidence could not be repaired, whether its belief in her dishonesty was such that a reengagement order was unlikely to be carried into effect with success. The tribunal was thus entitled to scrutinise whether the trust's stated belief was genuinely and rationally held, tested against the other factors the tribunal considered relevant. It was, however, still a question to be tested from the perspective of the trust, not that of another employer, still less that of the tribunal: was it practicable to order this employer to re-engage this claimant? And, unfortunately, we do not feel able to conclude this was the approach adopted by the tribunal. We consider that paras 48–49, in particular, set out the conclusions reached by the tribunal itself, standing in the shoes of the employer, testing the question of practicability from the tribunal's perspective rather than asking what was practicable as between these parties, the parties to the re-engagement order it was considering making. That being so, we consider we are bound to allow this appeal and set aside the order."*
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> 44. I consider that that approach is the one that employment tribunals should adopt in considering whether it is practicable to order re-engagement in cases where an employer asserts that the conduct of an employee was such as to have led to a breakdown in trust and confidence between the employer and employee. The question is whether the employer had a genuine, and rational, belief that the employee had engaged in conduct which had broken the relationship of trust and confidence between the employer and the employee.

21. So, as highlighted by the last sentence, the question is whether the employer had a genuine and rational belief that the employee had engaged in conduct which had broken the relationship of trust and confidence between the employer and the employee.

22. The court continued in paragraph 45:

> … similar principles apply to the consideration of whether it is practicable to order re-engagement in cases where an employer has a genuine and rational belief that the employee lacks the ability to perform the required role if re-engaged. The employer will need to establish that it genuinely believes that, if re-engaged, the employee would not be able to perform the role to the requisite standards and that that belief is based on rational grounds. Mere assertion by an employer that it does not believe that the employee would, if re-engaged, be able to meet the demands of the role will be insufficient. But if the employer is able to establish that it genuinely and rationally had such a belief, that will be relevant to, and probably determinative of, the question of whether it is practicable for an employer to comply with an order for re-engagement

23. And then, in 46:

> Similarly, an employee may have engaged in conduct which did not, of itself, cause or contribute to dismissal, but which an employer may genuinely and rationally believe means that it can no longer rely upon the integrity of the employee and is unable to have trust or confidence in the employee in future if he were to be re-engaged. … (if the conduct had caused or contributed to the dismissal, section 116(3)(c) of the Act requires the employment tribunal to consider whether it would be just to order re-engagement). Again, the tribunal will have to test whether the employer genuinely believes that the employee cannot be trusted to work for the employer in future and whether there is a rational foundation for that belief. It would not be appropriate to seek to restrict the type of conduct capable of leading to such a conclusion to a category defined, or described, as extreme cases. Rather, the nature of the conduct may well be a factor that is relevant to the assessment of whether the belief is genuinely held, or whether there is a rational basis for the belief. If, for example, the conduct was insignificant or involved minor misconduct, or occurred a long time ago, that may be a factor pointing to a conclusion that the belief that the employer cannot trust the employee to work for him is either not a genuine reason for objecting to re-engagement or is a belief that has no rational basis.

24. Thus the tribunal does not simply take the employer at its word (or at the word of a senior member of staff) when there is an assertion that the employee's conduct (whether or not it was conduct which led to the dismissal) is such that it can no longer rely on the integrity of the employee. The genuineness and rationality of the belief must be analysed.

25. The Court of Appeal went on in the subsequent paragraphs to comment on how the employment tribunal had been wrong in that case and the Employment Appeal Tribunal had been correct in the approach it had taken. In particular, it was made clear by the Court of Appeal that the employment tribunal must not substitute its own view for whether the employee could be trusted not do the job (to the required standard). Instead it must decide whether the employer does have a genuine and rational belief about the employee's lack of honesty and/or lack of capability. It is that belief that should be considered when deciding whether re-instatement or re-engagement is not practicable.

26. The fact that the tribunal has decided that the dismissal was unfair does not prevent the respondent from asserting that it still has a genuine and rational belief that the employee did in fact commit the misconduct in question and that that belief means that it is not practicable for him to resume employment See Wood Group Heavy Industrial Turbines Limited v Crossan [1998] I.R.L.R. 689.

27. The employee's conduct during the litigation including the types of things said in written witness statements or oral evidence might potentially be taken into account as meaning that it is not practicable for the claimant to resume employment. However, given the fact that the unfair dismissal complaint has succeeded, the mere fact alone that the employee has expressed disagreement with the decision to dismiss him, or said that he has been treated unfairly, or that his treatment was inconsistent with the treatment for other employees, does not mean that it is not practicable for him to be re-employed. The power to award this remedy would be meaningless if it could never be awarded if the employee has criticised the employer for the dismissal.

28. Any risks to the respondent's business are obviously important factors .

29. In terms of contributory conduct that is an issue which must always be considered. As just mentioned, the employer's belief about the employee's actions might be relevant to the question of practicability. In any event, apart from considering the employee's conduct (or perceived conduct) at the practicability stage, as per sections 116(1)(c) and 116(3)(c) ERA, the tribunal must consider whether it would be just to order reemployment in light of the decisions the tribunal has made about the Claimant's contributory conduct. The fact that contributory conduct has to be taken into account does not prevent a tribunal from making a re-employment order, if the circumstances warrant it, even if there has been a large amount of contributory conduct.

Evidence and Findings of Fact

30. In considering our decision we have taken into account all of the findings set out in out liability decision and reasons. It is not necessary for us to repeat extensively what we have already said there.

31. Based on the additional evidence that we heard on the issue of re-employment, after the liability decision and reasons were given orally, our additional findings of fact are as follows.

32. We heard witness evidence from Abbie Goldbold. This was the first time she had given evidence in the case (though she was referred to in the evidence of others, and in the hearing bundle). Her job title is "Head of People Operations – Citygate" and she is a senior HR professional employed by the Respondent. We also heard further evidence from Mr Joshi and Mr Poole. We accept that each of them gave truthful accounts of the facts and opinions stated in their evidence, and that were they mentioned that they "did not know" the answer to a particular question, that was a truthful answer.

33. The Claimant's own post was filled in 2022 by a permanent employee. It was temporarily covered for a few weeks from a colleague from another branch (Isabel), and then it was filled permanently, and Isabel retained her own post at the other branch.

34. Each of the 5 sites for which Mr Joshi was responsible each had/have an administrator role, on site, with similar duties to those of the Claimant. Each of those 5 roles are filled by permanent employees.

35. The Head Office administrator team (on which the Claimant had worked some years ago) has around 10 to 16 posts. All of those posts are filled by permanent employees (not agency workers or fixed term contract employees) most of whom have been employed for some years.

36. In short, there are no vacancies at either head office or any of the 5 sites for which Mr Joshi was responsible (including Colindale, where the Claimant was based in the years immediately prior to dismissal), or at Head Office (in Ruislip).

37. A different part of the group had a vacancy (at a Volkswagen dealership in Brentford). Ms Godbold was unsure as to which precise qualifications were needed (though she was sure that there were some) and whether the Claimant met the qualification requirements. However, the Claimant did not wish to be considered for that.

38. On the Claimant's case, as discussed in her Particulars of Complaint [Bundle 20] and further correspondence to the Tribunal (for example, [Bundle 77] and [Bundle 85]) her working relationship with Mr Joshi was a poor one. We accept the submission made on her behalf that her opinion on that historic situation would not – in itself – prevent a successful future employment relationship between her and the Respondent, given that Mr Joshi has since moved on.

39. The Claimant also made allegations of harassment related to sex and discrimination because of sex, which all failed. These were directed at the conduct of Mr Joshi (give or take the fact that the dismissal was alleged to be a contravention of EQA and that, while Mr Joshi was the decision-maker for the initial decision, the appeal was heard – and rejected – by Mr Poole).

40. Mr Poole expressed the opinion that, because of the unsuccessful Equality Act 2010 ("EQA") complaints, he might find it difficult to trust the Claimant in future. He said this was on the basis that the Claimant had made allegations against a trusted employee of the business (Mr Joshi) and that the Tribunal had decided that these claims should all fail. He stopped short of expressing the opinion that the allegations were malicious, but said that he thought that they had been made to "gain favour" with the Tribunal and the Tribunal's liability decision meant that the Tribunal had ruled that there was "no substance" to the claim.

41. The Tribunal asked Mr Poole whether, having now heard the evidence presented at this final hearing, including about discrepancies between [Bundle 348] and [Bundle 439], and the Claimant's explanation that she had in fact often been in the building by 10am, and working elsewhere (on ground floor) prior to her first arrival at her desk (in her first floor office), he now accepted that account. He said that he did not.

Analysis and Conclusions

42. The Claimant's primary request was for reinstatement. Failing that, she sought re-engagement, and she was willing to work at either Colindale or Head Office, on the basis of working the same hours as before (Monday to Friday, 10am to 6pm, with 30 minute unpaid lunchbreak).

43. She was potentially willing to undertake any administrative job for which she was suitable.

44. Head Office, she estimated would be a journey of approximately 1 hour by bus in each direction. Her evidence in the liability phase of the hearing was that she travelled to Colindale by walking each day, and the journey was a 55 minute walk.

45. It was the Claimant's oral evidence in cross-examination that she believed some of the occasions on which she was accused of being late, she was actually working. In response to why she did not contemporaneously reply to Mr Joshi's emails accusing her of being late, she said that when she got to her desk in the morning, she wanted to focus on her work, and that she thought there was no point replying to Mr Joshi, because he would not believe her, and the argument would distract her from her work and leave her unable to focus.

46. When she was asked (by the panel) why, in that case, she did not wait until the end of the day and send an email refuting the accusation of lateness, she said that – whether she sent the reply first thing in the morning, on seeing the email, or whether she sent it last thing at night, before going home – it would make no difference, and she just wanted to focus on her work rather than engage with Mr Joshi about (alleged) lateness.

47. In answering panel questions, after cross-examination had finished, she was asked why – if the truth of the matter was that she had been downstairs working, and if she thought she would be disbelieved – she could not simply have replied to the emails (including those which included what purported to be time-stamped images from CCTV showing her empty office) to say "*if you check the CCTV, you will see that I was on time, and working downstairs*". Her answer was that she did not think to do so.

48. The panel was not impressed by Mr Poole's suggestion that the fact that a former employee has alleged breaches of EQA (in the main against someone who is no longer employed by the Respondent) would be a sound basis to lack trust in the employee. The underlying facts of the matter were not really in dispute. The Claimant received many communications from Mr Joshi about lateness, and ultimately was given a formal warning, then a final warning, and then was called to a disciplinary hearing by him. He was, on the Respondent's case (which we accepted) the decision-maker, on the Respondent's behalf, who decided that the Claimant would be dismissed. We decided that she had not proven that her performance was placed under extra scrutiny than other people's (or, at least, those in comparable circumstances). We found that the burden of proof did not shift in relation to Mr Joshi's conduct in taking action against the Claimant for lateness (including the monitoring of her alleged arrival times) or in relation to the dismissal. We made no finding that the Claimant herself did not genuinely believe that there was a connection between the way she was treated and the fact that she is a woman.

49. There are sound public policy reasons why victimisation (as defined by section 27 EQA) is forbidden. Employers should generally have policies which encourage the reporting (internally) of alleged discrimination, and

those policies should generally make clear that a person who makes a complaint or allegation, which is not upheld, will not be penalised for that (other than where the employee has deliberately given false evidence or information, for example).

50. The unsuccessful EQA complaints, in themselves, would not have prevented us from making an order for re-employment had we otherwise thought that such an order was appropriate.

51. However, no order for either reinstatement or re-engagement is appropriate.

52. If we ordered that the Claimant be reinstated, then, to comply with the order, the Respondent would be required to dismiss the current postholder or redeploy them. We are not satisfied that there are alternative vacancies elsewhere to which the postholder could readily be redeployed. On that latter point, we take into account that there was not much evidence about the Brentford post, and no evidence about how far the existing postholder would need to travel if hypothetically redeployed to Brentford (which is a significant distance across London from the Colindale site).

53. If we ordered that the Claimant be re-engaged, to Head Office, then, to comply with the order, the Respondent would be required to dismiss a current employee or redeploy them. As mentioned in the previous paragraph, we are not satisfied that there are alternative vacancies elsewhere to which any Head Office employee could readily be redeployed (albeit there is no evidence about whether any of them might prefer Brentford).

54. Even if there had been vacancies, our findings of fact (as per the breach of contract for notice pay issue) were that the Claimant was often very late. There were problems with the Respondent's evidence about (alleged) arrival times on the specific dates presented as evidence in the dismissal hearing [Bundle 348] such that that document (and/or [Bundle 439]) would not have enabled us to make findings, on balance of probabilities, about what her arrival time was on each working day from 8 December 2021 to 13 January 2022. However, the weight of the evidence over the years was that the Claimant was, in fact, often late, and when pushed, did not deny being late (and when not pushed, simply ignored the issue, by declining to phone in to say she was going to be late, and by failing to even open, let alone reply to, emails sent to her accusing her of being late.

55. Given that Mr Poole conducted the appeal hearing, in which the Claimant did not deny being late, and read the correspondence sent to him as part of the appeal in which she admitted being late, it is not unreasonable that he did not believe her account, presented for the first time in the hearing, that she had actually (usually) been on time, and downstairs working.

56. The fact that the Claimant was so often late to a workplace when she could walk to work cannot be ignored when considering whether it would be practicable for the employment relationship to be resumed with her working at a site further away, and to which she would need to travel by public transport (by bus, we were told).

57. While it is not – of course – impossible that the Claimant's timekeeping would improve considerably if she were re-engaged, given that she now knows that

the Respondent is prepared to dismiss her if it did not, there is a very significant chance that it would not given how longstanding the issue was, and how many communications had been sent to her about it. (A matter which will potentially be thoroughly explored when we hear submissions about, and make decisions about, Polkey issues).

58. Therefore, we are not persuaded that the contract would be successfully performed even if we did order re-engagement, and that is an additional reason that we decline to do so.

59. There will be a contributory fault reduction (though the specific percentage is to be addressed at the remedy hearing). This does not prevent a re-employment order, though it is a relevant factor. The contributory fault reduction is likely to be either 25% or 50% or 75% or 100%. Our provisional view is that it is more likely to be within the higher end of that range than the lower. It would not be just to order re-employment on these particular facts, and that is a further reason that we decline to do so.

Employment Judge Quill

Date: 2 February 2024

RESERVED JUDGMENT SENT TO THE PARTIES ON
5 February 2024

FOR THE TRIBUNAL OFFICE