IN THE EMPLOYMENT TRIBUNAL

Claim Number: 21/2018

BETWEEN:

(1) PAUL PODESTA
(2) BAHRAM ALIZADEH
(3) ALEXANDER MURRAY

Claimants

-AND-

HARRIDGE BUILDERS LIMITED

Respondent

AMENDED DECISION

Chairperson: Gabrielle O'Hagan

For the Claimants: Ms Janieve Buhagiar of Counsel, instructed by Ellul & Co
For the Respondent: in person, Mr Phil Norris (director)

The Decision of the Tribunal is that: (i) all three Claimants were unfairly dismissed by the Respondent and are awarded compensation; and (ii) the Respondent must pay the Claimants the redundancy payments due to them and prescribed under the Conditions of Employment (Redundancy Pay) Order, 2001.

This Decision has been amended under Rule 59 of the Employment Tribunal (Constitution and Procedure) Rules 2016 to correct an accidental calculation slip.

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1. On 5 July 2018, Mr Podesta (born 8 October 1965), Mr Alizadeh (born 18 January 1962) and Mr Murray (born 31 January 1958) each filed in the Tribunal a multiple cases Claim Form against the Respondent claiming unfair dismissal and a redundancy payment, accompanied by a joint Statement of Facts and exhibits. The Respondent filed 3 Response Forms on 31 July 2018.

2. A Preliminary Hearing took place on 4 December 2018 and a Case Management Order was made. At a pre-trial review Hearing on 6 May 2019, the Case Management Order was varied as regards the Hearing dates and as regards service of the Respondent's witness statements. The Respondent made an Application dated 10 June 2019 for a Witness Order to be made in respect of Mr Richard Ullger, Labour Inspector. An Order was made dated 24 June 2019 requiring Mr Ullger to give

evidence at the Hearing of the Claims. Mr Ullger being unavailable on the listed Hearing dates, following correspondence, the Hearing took place on 15, 17 and 18 July 2019.

3. On Friday, 12 July 2019, the Respondent's sole director, Mr Phil Norris, emailed the Tribunal and said that he had had a scooter accident and that he would not be able to attend the Hearing. He attached a medical certificate dated 11 July 2019 of a knee injury with a fitness for work date of 22 July 2019. The Secretary of the Tribunal responded by email on 12 July 2019 that Mr Norris should send a representative to the Hearing on the Monday (15 July 2019) either to represent the Respondent in respect of the hearing of the Claims, or if necessary to present a satisfactory medical certificate. Mr Norris did not reply and the Secretary of the Tribunal sent him a further email on the morning of 15 July 2019 stating that his attendance was awaited and that I would then be able to consider any applications he might make for an adjournment. The Secretary also offered to assist if Mr Norris needed help with travelling to the Hearing, albeit that she had seen him earlier that morning on his scooter. Mr Norris did not reply and did not attend the Hearing that morning.

4. At the opening of the Hearing on 15 July 2019, I expressed my disappointment at Mr Norris' failure to attend or be represented and noted that no evidence had been provided by Mr Norris explaining why he was not able to do so; a medical certificate of a knee injury without any other explanation is not a satisfactory justification for non-attendance at a Tribunal Hearing. However, in the interests of fairness and justice, I adjourned the Hearing until 17 July 2019 to allow the Respondent the time to present a properly substantiated application for postponing the Hearing or to organise for a representative to conduct the Respondent's case. This was confirmed to the Respondent by email on 15 July 2019, together with advice that if the Respondent failed to attend or be represented at the Hearing, the Tribunal could proceed with hearing the Claims in the absence of the Respondent, taking into account the information available to it about the reasons for the absence. On 16 July 2019, Mr Norris responded that the Respondent had "*honoured*" many medical certificates of the Claimants during their employment (and attaching copies) and "*as a matter of fairness ... the same courtesy [should] be reciprocated*" by the Tribunal. The Tribunal responded that this communication did not explain why Mr Norris/the Respondent was not able to attend the Hearing of the Claims; a medical certificate of unfitness for work due to a knee injury alone was not a satisfactory explanation for non-attendance at a Tribunal Hearing.

5. Mr Norris did not appear or send a representative to the Hearing on 17 and 18 July 2019 and the Claims were heard in the absence and without representation of the Respondent. All three Claimants gave evidence, as well as Mr Ullger.

The facts

6. As at the date of termination of their employment (4 May 2018), Mr Podesta (painter/decorator) had been employed by the Respondent for 13 years (from 28 February 2005), Mr Alizadeh (painter/decorator) for 15 years (from 19 November 2002) and Mr Murray (carpenter) for 18 years (from 15 June 1999).

7. In Section 9, "Industry Pay Agreement", of the Claimants' ETB Notices of Terms of Engagement, the Respondent stated in each case: "*AS STAT*".

8. Mr Podesta was paid gross £440 and net £362.25 per week. Mr Alizadeh was paid gross £440 and net £386.22 per week. Mr Murray was paid gross £484 and net £401.53 per week.

9. On 27 October 2017, the Respondent emailed the Labour Inspectorate and requested information on redundancy payments under the Construction and Allied Trades Association Working Agreement by Unite the Union for the Construction Industry ("**CATA**"). On 30 October 2017, Mr Richard Ullger, Administrative Officer, Labour Inspectorate, responded with a copy of the latest CATA and referred the Respondent to Section 40, "*Redundancy Payments*". This provides as follows:-

   "1. ... the employer shall pay a redundancy payment in respect of the duration of that employment 3. ... redundancy payment to be assessed on the basis of 1.5 hours pay, at the General Operative's rate, for each week of employment."

10. In Mr Norris' (unsigned) Witness Statement, he said that once the Tribunal proceedings were underway he had met with Mr Ullger (on 15 March 2019) and asked him to confirm the contents of his email. According to Mr Norris, Mr Ullger: "*stated that, yes, this was his advice and this was given to the best of his knowledge and he understood this to be valid at the time*". Mr Ullger said in his oral evidence that Mr Norris had asked to meet him to discuss whether Mr Ullger would be prepared to give evidence to this Tribunal.

11. On 2 February 2018, Mr Norris told Mr Alizadeh and Mr Murray that he was giving them 13 weeks' notice of termination for redundancy due to a change of circumstances within the Company's affairs. Mr Norris said that he might later be able to contract them to work, but that this would be on a self-employed basis.

12. On hearing from Mr Alizadeh and Mr Murray what had happened to them, Mr Podesta attended the Respondent's office on 5 February 2018 and asked about his future, against the background of this being the first time that he had heard that there was a redundancy situation within the Company. He was informed by Mr Norris that he was also being made redundant. When he asked why, Mr Norris told him that there had been a change in circumstances within the Company and he could not keep him on. Mr Norris told Mr Podesta that he could offer to hire him on an as needed basis after termination, cash in hand. Mr Podesta asked Mr Norris whether he was making all the Respondent's employees redundant or just the three Claimants. Mr Norris said that he was not making redundant the Company's other three employees as he said they would be unable to find new jobs because they lived in Spain.

13. Mr Norris gave Mr Podesta a letter dated 5 February 2018 (the same letter had been given to Mr Alizadeh and Mr Murray on 2 February 2018):

    "As discussed, due to unforeseen circumstances we find ourselves in a position where your continued employment with Harridge Ltd, under present conditions is becoming untenable. Therefore you should accept this letter as 'notice of redundancy' which will of course be dealt with as per statutory redundancy provisions."

14. All three Claimants said in their Affidavits that this was the first time that they had heard of any change in circumstances of the Respondent or of potential redundancies. There had been no

warning or any consultation process. None of them even now are aware of the selection process (if any) which resulted in their terminations. All three stated in their Affidavits that: *"being made redundant was quite shocking."*

15. Mr Norris stated in his Witness Statement however that:

"During the preceding months before the issuance of redundancy notices various conversations were held with all 3 claimants. Each one of them, for their own reasons, seemed happy with the prospect of being made redundant to the point where they all on various occasions expressed a voluntary willingness."

16. The following week, on 12 February 2018, the Respondent again contacted Mr Ullger, enquiring again about redundancy payments and CATA. When Mr Ullger gave oral evidence, he handed up a copy of the email which he had received from Mr Norris (which the Respondent had not disclosed) in which Mr Norris said:

"If it's possible, would you be able to write an explanation on the CATA redundancy and how it is calculated when an employee redundancy would be a year's salary".

17. Mr Ullger responded by email dated 12 February 2018 attaching a copy of the latest CATA, again referring the Respondent to Section 40, and advising on the payment calculations under CATA. This time, Mr Ullger stated:-

"However, Employment Legislation provides for minimum terms and conditions of employment and therefore no employee should pass under any conditions that are less favourable than those prescribed in the Employment Act. This was clearly illustrated in the recent case of Francis Duarte v The Administrator of the Gibraltar Development Corporation (copy also enclosed) at the Industrial Tribunal in 2015, when judgment was ruled in favour of the complainant and he was awarded the difference between what he should have been paid as per legislation and the sum which he actually received as per CATA."

18. On the same day, 12 February 2018, the Claimants also contacted the Labour Inspector (as well as legal advisers and the Citizens' Advice Bureau), all of whom (including Mr Ullger by telephone) confirmed that the Claimants were entitled to 52 weeks' statutory redundancy pay. The Claimants sent a letter to the Respondent dated 14 February 2018:

"... we have been duly informed by the Labour Inspector and a Solicitor that we are to receive no less than One Year Pay as our Redundancy Settlement.
We have also been informed that unless this is the case, to start proceedings of an Industrial Tribunal to deal with this matter."

19. On 24 April 2018, another Labour Inspector, Ms Geraldine Villanueva, sent an email to Mr Norris and copied in Mr Ullger. Mr Ullger presented a copy of the email when he attended the Tribunal to give his evidence (the Respondent had not disclosed it). Ms Villanueva told Mr Norris:

"As explained in our conversation and also in my colleague Richard Ullger's email to you dated 12/12/18, the Employment Act prescribes for minimum terms and conditions and no employee can

have conditions less favourable than those prescribed in legislation. Failing to adhere to such terms and conditions constitutes an offence under such Act.
CATA agreement provides for a redundancy payment of 1.5 times the adult general operative rate per week in employment however these gentlemen have worked for many years in your company and when redundancy is calculated as per the CATA agreement it is less favourable than what the Employment Act allows. Mr Ullger also mentioned a case in the Employment Tribunal when the judgment was ruled in favour of the complainant and he was awarded the difference between the CATA redundancy and the statutory minimum.
I would like to remind you that contravention of the above ... may render your company liable to prosecution..."

20. All three men's employment was terminated by the Respondent on 4 May 2018. The Respondent sent a letter to each of them on 4 May 2018 (mis-dated April):

"Following our necessity to issue redundancy notice, it is with sadness that your contract of employment now finishes today 04.05/2018."

Each Claimant was advised that he would be paid as normal for that week, as well as being paid accrued but untaken holiday pay.

Mr Podesta was told he would be paid redundancy pay of £7,617.50. Mr Alizadeh was told he would be paid redundancy pay of £8,936.02. Mr Murray was told he would be paid redundancy pay of £10,919.34. All three payments had been calculated using CATA, and were far short of the Claimants' statutory entitlements under the Conditions of Employment (Redundancy Pay) Order, 2001.

21. The Claimants' Claim Forms were filed on 5 July 2018 claiming unfair dismissal and full statutory redundancy payments. The Respondent's Response Forms filed on 31 July 2018 stated in each case that:

"Following consultation, and advice from Labour Inspector[ate] the Claimant was paid a total of £... as set out in the letter of 4th April 18 and pursuant to the terms of the CATA Agreement currently in force."

22. In evidence, all three Claimants presented credible evidence of their job seeking efforts after their dismissal by the Respondent, none of their efforts having much success. Mr Podesta explained that he had been sending out his CV to local building companies, but no responses had been received. Mr Alizadeh said the same, albeit that he had managed to find some little jobs on a self-employed basis. Mr Murray stated that he continued to attend the Employment Service Job Centre. All three Claimants very obviously wanted nothing more than to get back to work, mainly because of the financial impact they and their families are suffering.

The law

Redundancy pay

23. The Conditions of Employment (Redundancy Pay) Order, 2001 (**the Redundancy Pay Order**) provides:-

*"**Application.***

3.(1) Subject to sub-regulation (2), this Order shall apply to all employees in any undertaking or any branch or department of an undertaking of which no other statutory provision is made for compensation by reason of redundancy.

Compensation by reason of redundancy.

4. Where a person's employment is terminated by reason of redundancy, he shall be paid by his employer by way of compensation–

(a) for each of the first 5 completed years of service, 2 week's pay;

(b) for each of the next 5 completed years of service, 3 weeks' pay;

(c) for each additional completed year thereafter, 4 weeks' pay;

(d) in respect of an employee aged 41 years and over, for each completed year of service after the age of 40, 2 weeks' pay,

Provided that the total amount of the redundancy payment shall not exceed the amount of 1 year's pay and that no payment will be made to an employee who has not completed 1 year's service.

Minimum nature of conditions prescribed.

6. The provisions of this Order shall not prevent agreements for compensation by reason of redundancy more favourable than those prescribed in this Order."

Unfair dismissal

24. Section 65 of the Employment Act ("**the Act**") provides:

> *"(1) In determining ... whether the dismissal of an employee was fair or unfair, it shall be for the employer to show - (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal*"; and that that reason is one of the fair reasons set out in Section 65(2), which include a reason which *"(c) was that the employee was redundant*". A redundancy situation arises inter alia when the requirements of a business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish (Section 65(7)).

25. Section 65(6) of the Act provides:

> *"...the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances he acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and that question shall be determined in accordance with equity and the substantial merits of the case*". The test for substantive fairness in respect of any decision to dismiss is whether the decision fell within the

band of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (*Iceland Frozen Foods-v-Jones* [1982] IRLR 439). It is not relevant whether the Tribunal would have taken the same decision or action; the Tribunal must not substitute its view for the employer's view (*Folev-v-Post Office: Midland Bank Plc-v-Madden* [2000] IRLR 82).

26. In the great majority of cases, an employer will not act reasonably in treating the reason as a sufficient reason for dismissal under Section 65(6) unless and until it has taken the procedural steps which are necessary in the circumstances of the case to justify the course of action. Otherwise, the dismissal will be unfair (*Polkey-v-A E Dayton Services Ltd* [1988] ICR 142 HL).

27. *Polkey* remains the leading case with regard to reasonable procedure in redundancy cases, in which the House of Lords held:

"the employer will normally not act reasonably unless he warns and consults any employees affected ... adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation."

Compensation

28. Section 70(3) of the Employment Act provides that where the Tribunal finds that the grounds of a claim for unfair dismissal are well-founded and does not make a recommendation, the Tribunal shall make an award of compensation, to be paid by the employer to the claimant, in respect of the dismissal. Section 71 provides that the award of compensation shall consist of a basic award and a compensatory award.

29. The Employment Tribunal (Calculation Of Compensation) Regulations 2016 **(the Regulations)** provide:-

"1.(2) For the purposes of these Regulations–

"the appropriate amount" means–

(a) one and a half weeks' pay or three times the weekly minimum wage, whichever is the greater, for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay or twice the weekly minimum wage, whichever is the greater, for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two...

"weekly minimum wage" means the amount prescribed as the minimum weekly remuneration payable under the Conditions of Employment (Standard Minimum Wage) Order 2001 as amended from time to time...

Basic award.

2.(1) The amount of the basic award provided in section 71(a) of the Employment Act, shall be £2,200 or such higher amount as calculated by–

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
(c) allowing the appropriate amount for each of those years of employment.

...(5) Where the Employment Tribunal considers that any conduct of the employee 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 Employment Tribunal shall reduce or further reduce that amount accordingly.

... (8) The amount of the basic award shall be reduced or further reduced by the amount of–
(a) any redundancy payment awarded by the Employment Tribunal in respect of the same dismissal, or
(b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of the Employment Act or otherwise).

Compensatory awards.
3.(1) ... the amount of the compensatory award shall be such amount as the Employment 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.

... (3) The loss referred to in subregulation (1) shall be taken to include in respect of–
(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy, or
(b) any expectation of such a payment,
only the amount (if any) by which that payment would have exceeded the amount of a basic award (apart from any reduction under regulation 2(4), (5) or (7)) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subregulation (1) the Employment 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 Gibraltar.

... (6) Where the Employment 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.

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (the "Payment") exceeds the amount of the basic award which would be payable but for subregulation [2](8) ("Initial Basic Award Amount"), the difference between the Payment and the Initial Basic Award Amount shall be deducted from the compensatory award.

(8) The amount of a compensatory award to a person calculated for the purposes of section 72 of the Employment Act, shall not exceed the lesser of–

(a) the amount which, in the case of the person who has presented a complaint under section 70 of the Employment Act, represents 104 weeks' pay; or

(b) the amount calculated as follows– 104 x (2 x the weekly minimum wage), whichever is the less.

... (10) The limit imposed by this regulation applies to the amount which the Employment Tribunal would, apart from this regulation, award in respect of the subject matter of the complaint after taking into account–

(a) any payment made by the respondent to the complainant in respect of that matter, and
(b) any reduction in the amount of the award required by any enactment or rule of law".

The Polkey deduction principle

30. *Polkey-v-A E Dayton Services Ltd* [1988] ICR 142 HL established that if a dismissal is found unfair by reason of procedural defects, then the Compensatory Award may be reduced or limited to reflect the chance that the claimant would have been dismissed in any event and that the employer's procedural errors accordingly made no difference to the outcome. This is commonly referred to as a "Polkey deduction" (or reduction). This does not mean that the unfair dismissal is rendered fair, but allows the Tribunal to make a realistic assessment of loss according to what might have occurred in the future. The chances of the actual employer, not a hypothetical reasonable employer, dismissing the employee have to be assessed. This requires consideration of the employer's likely thought processes and the evidence that would have been available to it.

31. Although the Tribunal is not under a general duty to investigate whether a fair dismissal might have occurred had proper procedures been followed, it must do so if there is some concrete evidence to this effect: "*The question is not whether the Tribunal can predict with confidence all that would have occurred; rather it is whether it can make any assessment with sufficient confidence about what is likely to have happened, using its common sense, experience and sense of justice*" (*Software 2000 Ltd v Andrews and others* (UKEAT/0533/06/DM). The evidence need not emanate solely from the employer's evidence or cross-examination of the claimant's witnesses. Rather, the Tribunal must have regard to all the evidence when making its assessment, including any evidence from the Claimant (*Ventrac Sheet Metals Ltd v Fairly* (UKEAT/0064/10). But there must be some evidence to support a Polkey deduction. In *Compass Group plc v Ayodele* [2011] IRLR 802, the EAT upheld a Tribunal's refusal to make a Polkey deduction where the employer had not made any submissions, adduced any evidence, or cross-examined any witnesses as to the period of loss. The EAT held that, while it is for the employee to prove their loss, it is for the employer to put forward any arguments under *Polkey* and to support them with evidence.

Decision

Statutory redundancy pay

1. The Redundancy Pay Order prescribes the statutory minimum conditions for redundancy pay. By corollary with Section 6 of the Order, they cannot be reduced by an agreement for compensation less favourable than those prescribed in the Order, whether by way of trade union agreement or otherwise. As held in *Francis Duarte-v-The Administrator of the Gibraltar Development Corporation* (Ind Tri 12/2011) (12 February 2015): "*...as the CATA Agreement provides for redundancy pay that is less than the statutory minimum ... the provisions of the CATA Agreement are not applicable in this particular case*".

2. Under the Redundancy Pay Order, all three Claimants were entitled to minimum one year's redundancy pay: in the case of Mr Podesta, £22,880; in the case of Mr Alizadeh, £22,880; and in the case of Mr Murray, £25,168.

3. The Respondent's defence to the Claims for these statutory minimum redundancy payments under the Redundancy Pay Order is that the Claimants were instead paid redundancy pay in accordance with CATA: in the case of Mr Podesta, £7,617.50; in the case of Mr Alizadeh, £8,936.02; and in the case of Mr Murray, £10,919.34. But as was clear from the evidence given by Labour Inspector Mr Ullger and the email correspondence between the Labour Inspectors and the Respondent on 12 February 2018 and 24 April 2018, the Respondent was fully on notice of the minimum statutory redundancy payments to which all three Claimants were entitled under the Redundancy Pay Order and also that CATA did not entitle the Respondent to pay less than those statutory minimums.

4. However, Mr Norris chose to ignore this. The Respondent did not pay Mr Podesta the statutory redundancy payment to which he was entitled under the Redundancy Pay Order. He is entitled to a remaining payment of ~~£21,262.50~~ £15,262.50. The Respondent did not pay Mr Alizadeh the redundancy payment to which he was entitled under the Redundancy Pay Order. He is entitled to a remaining payment of 13,943.98. The Respondent did not pay Mr Murray the redundancy payment to which he was entitled under the Redundancy Pay Order. He is entitled to a remaining payment of £14,248.66.

Unfair dismissal

5. It is not in dispute that the Claimants were dismissed, nor that the reason for the dismissals was genuinely redundancy, which is one of the statutory fair reasons for dismissal (Section 65(2)(c) of the Employment Act). The Respondent was suffering a downturn in business that resulted in it requiring less employees to carry out its work.

6. However, as regards procedural fairness, the position is quite different. The Respondent's letters to the Claimants of 2 and 5 February 2018 notified the Claimants that they were being made redundant on 12 weeks' notice. No evidence was submitted in support of Mr Norris' statement in his Witness Statement that in the months before this, conversations were held with all three Claimants: *"Each one of them, for their own reasons, seemed happy with the prospect of being made redundant to the point where they all on various occasions expressed a voluntary willingness."* The Claimants all denied this and the consistent evidence given by all three of them was that no such conversations had been held. They all said that the days on which they were told they being made redundant was in each case the first time they were aware that there was a redundancy situation.

7. The Claimants' consistent evidence also was that Mr Norris had said that he was not making redundant the Company's other three employees as they would be unable to find new jobs because they lived in Spain. There was no reason to disbelieve this. I agree with the Claimants that this is not a fair or reasonable redundancy selection criteria. I further find that on the evidence, no other selection criteria appears to have been used.

8. Although I bear in mind that the Claimants were not cross-examined due to the Respondent's non-appearance at the Hearing and that Mr Norris for the same reason did not give any evidence in

support of the Respondent's defence(s), all three Claimants presented as genuine and sincere in examination and gave me no reason to doubt their credibility, on any issue.

9. I find that the Respondent did not carry out a fair redundancy procedure. There was no prior warning or any notification that a redundancy situation existed. There was no notice of the selection criteria. There was no consultation process, not even a formal meeting for the Claimants to be told that they were being made redundant and given the opportunity to make proposals as to avoiding the same. Inevitably, the Claimants were not given the right to be accompanied at such a meeting, since there was not one. The Claimants were thereby deprived of their basic right to a fair hearing. The Claimants were not given the right to appeal the redundancy decisions.

10. The failure by the Respondent to undertake a reasonable or fair (or indeed any) redundancy procedure means that the Respondent did not act reasonably in treating redundancy as a sufficient reason for each of the Claimants' dismissals under Section 65(6) of the Employment Act and renders the dismissal of each of the Claimants unfair.

Awards

11. The Basic Awards for unfair dismissal under Regulation 2(1) of the Regulations are:

    - Mr Podesta: £10,374 (£273 weekly minimum wage X3 X 12 years of employment when aged over 41; and £273 weekly minimum wage X2 X 1 year of employment when aged between 22 and 41);
    - Mr Alizadeh: £12,012 (£273 weekly minimum wage X3 X 14 years of employment when aged over 41; and £273 weekly minimum wage X2 X 1 year of employment when aged between 22 and 41); and
    - Mr Murray: £14,742 (£273 weekly minimum wage X3 X 18 years of employment when aged over 41).

    However, all three Basic Awards are extinguished to nil pursuant to Regulation 2(8), as they are all less than the statutory redundancy pay awards made above (paragraph 4) and the redundancy payments already made by the Respondent.

12. Counsel for the Claimants submitted in Submissions on the Basic Award that the Basic Award could not be less than £2,200, relying on the wording of Regulation 2(1) and the case of *Robert Holmes-v-Knights ("A Firm")* (Ind Tri. 29/2011) (8 May 2015). However, that claim was brought under the rules of this Tribunal's predecessor, the Industrial Tribunal, including very different regulations on the calculation of compensation. The wording of Regulation 2(1) is in my view clear: the Basic Award is minimum £2,200, which is then subject to the deductions set out in Regulations 2(4), 2(5) and 2(8).

13. In respect of the Compensatory Awards, each Claimant has claimed past net losses for the period between his dismissal and the date of the Hearing calculated by multiplying the number of weeks between the 4 May 2018 termination date and the 17 and 18 July 2019 Hearing date (62 weeks) and each Claimant's weekly net wages paid by the Respondent, less income and benefits received:

    - Mr Podesta, £17,989.50;
    - Mr Alizadeh: £19,755.64; and
    - Mr Murray: £24,894.86.

None of the Claimants claimed any future losses.

14. The Respondent did not raise the issue of mitigation (Regulation 3(4)) and therefore did not discharge the burden of proof that there had been a failure by any of the Claimants to mitigate their loss. In addition, the Respondent did not present any submissions or evidence in respect of contributory fault (Regulation 3(6)).

32. Further, the Respondent did not make any submissions, adduce any evidence, or cross-examine any witnesses in respect of Polkey deductions, including as to the period of loss. Following *Compass Group plc v Ayodele* [2011] IRLR 802, I therefore do not make any Polkey deductions.

15. Under Regulation 3(8), the following sums must be deducted from the Compensatory Awards:

- Mr Podesta: £12,506 (£22,880 redundancy pay less £10,374 Initial Basic Award);
- Mr Alizadeh: £10,868 (£22,880 redundancy pay less £12,012 Initial Basic Award); and
- Mr Podesta: £10,996 (£25,168 redundancy pay less £14,742 Initial Basic Award).

16. In summary, the Respondent is Ordered to pay to:

- **Mr Podesta** the outstanding statutory redundancy payment to which he is entitled under the Redundancy Pay Order: ~~**£21,262.50**~~ **£15,262.50**; and an Unfair Dismissal Compensatory Award: **£5,483.50**;

- **Mr Alizadeh** the outstanding statutory redundancy payment to which he is entitled under the Redundancy Pay Order: **£13,943.98**; and an Unfair Dismissal Compensatory Award: **£8,887.64**; and

- **Mr Murray** the outstanding statutory redundancy payment to which he is entitled under the Redundancy Pay Order: **£14,248.66**; and an Unfair Dismissal Compensatory Award: **£13,898.86**.

Gabrielle O'Hagan

Gabrielle O'Hagan, Chairperson
~~**18 September 2019**~~
22 October 2019