



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Yarwood
Respondent: Woo Seung Shin and Sun-ok Shin T/a Royal Victoria Hotel

Heard at: Ashford **On:** 20 June 2017

Before: EMPLOYMENT JUDGE CORRIGAN

Representation

Claimant: Mr Michael Foster, Solicitor
Respondent: Ms Y Montaz, Consultant

RESERVED JUDGMENT

1. The Claimant was unfairly dismissed and the Claimant is awarded compensation of £1834 to be paid by the Respondent to the Claimant. This award consists of a basic award of £1512 and compensatory award of £322.
2. Recoupment does not apply to this award.
3. The Claimant was wrongfully dismissed and is awarded damages of £812.54.
4. The Claimant's claim for holiday pay is dismissed upon withdrawal.
5. The total to be paid by the Respondent to the Claimant is £2646.54.

REASONS

1. By her complaint dated 12 January 2018 the Claimant brings a complaint of unfair dismissal and wrongful dismissal. The Claimant did not pursue the claim for holiday pay.

Issues

2. The issues were agreed with the parties to be:
 - 2.1. Was the Claimant dismissed?
 - 2.2. If not, did the Respondent's conduct on 11 and 12 October 2017 amount to a fundamental breach of contract entitling her to resign?
 - 2.3. If so, did the Claimant resign in response or did she resign because she realised she would face disciplinary action for her own conduct?
 - 2.4. Did the Claimant affirm the contract?
 - 2.5. If the Claimant was dismissed/constructively dismissed, what was the reason for dismissal?
 - 2.6. Was it the potentially fair reason of misconduct?
 - 2.7. Was dismissal for this reason reasonable in all the circumstances? Did the Respondent have reasonable grounds to consider the Claimant had committed misconduct, after a reasonable investigation? Did the decision to dismiss fall within the band of responses open to a reasonable employer?
 - 2.8. If the dismissal was unfair, is it likely the Claimant would have been dismissed for misconduct any way in the near future?
 - 2.9. What compensation is appropriate?
 - 2.10. Was there any blameworthy conduct by the Claimant that caused or contributed to her dismissal?
 - 2.11. Was there an unreasonable breach of the ACAS Code of Practice by either party? Should any award be adjusted to reflect this?
 - 2.12. Is the Claimant entitled to pay in lieu of notice?

Hearing

3. I heard evidence from the Claimant and Mr Graham Yarwood, the Claimant's husband, on the Claimant's behalf.
4. On behalf of the Respondent I heard evidence from Dr Woo Seung Shin (Managing Director) and Mrs Carol Moody (Accounts Manager).
5. The Respondent sought to include a late statement from Ms Danielle Cowell. The Claimant objected. I decided the evidence was not relevant as it was the opinion

of someone who was not present at the incident in question. To the extent that it related to the wider relationship issues regarding the Claimant there was already evidence in the bundle in regards to that. The additional witness statement was not allowed.

6. There was an agreed bundle.
7. Based on the evidence heard and the documents before me I found the following facts.

The Facts

8. The Respondent is a four star hotel in Hastings employing approximately 30 employees. The Claimant worked for the Respondent from 6 May 2009 as a food and beverage assistant. Her key role was to work in the bar.
9. The Claimant's terms and conditions include the following: "we reserve the contractual right to give pay in lieu of all or any part of the above notice by either party".
10. By the termination of her employment the Claimant earned £180 gross per week and £176.64 net per week.
11. There was some history in relation to the Claimant's conduct. There had been a customer complaint about the Claimant in 2014 which led to an investigatory meeting with the Claimant. The meeting note at page 31 recorded that there would be a written warning but there is no evidence of a written warning actually being sent. The Claimant accepts there was a meeting but says she never received a warning. Dr Shin's evidence was that he has a copy of the actual warning but that he did not bring it as he did not expect to be asked about it. I find this unlikely, given that the meeting record was disclosed as relevant and is relied upon by the Respondent. In the absence of evidence that a written warning was actually sent or given to the Claimant and where there is no evidence of the actual terms of the alleged warning I find that no warning was actually issued.
12. There was also a meeting on 5 November 2014 attended by Edward Shin (the Respondents' son), Carol Moody and the Claimant (and one other member of staff). The minutes are in the bundle at page 31A. This records that there were "issues" between the Claimant and Mrs Shin. Both parties accept that the two did not have a good relationship. The minutes record they had been arguing and calling each other names. The Claimant was told she needed to control her temper but Edward Shin is also recorded as acknowledging that his mother (Mrs Shin) also has a fiery a temper and that both were strong characters. The outcome was that the Claimant and Mrs Shin were to keep separate and for a long time they did not interact.
13. There were further meetings about the Claimant's attitude to customers but no formal disciplinary action.
14. I turn now to the events of 11 October 2017 and the incident involving the Claimant and Mrs Shin on that date. This was the first interaction between the two since

the decision that they keep apart. It began with Mrs Shin accusing the Claimant of disconnecting or draining the dishwasher or glasswasher.

15. I accept that she raised her voice and screamed at the Claimant. I also accept that either in the bar or later in the office (though more likely the bar) she told the Claimant she hated her, that customers hated her and that even the Claimant's own husband hated her. I accept that later the Claimant went to the office to hand in cash and the incident continued with Mrs Shin saying words to the effect that she wanted to strangle the Claimant and held her hands out toward her neck. For the avoidance of doubt I do not accept, even on the Claimant's account, that this was a threat to actually strangle or do grievous bodily harm to the Claimant but an expression of her annoyance at the Claimant.
16. The Claimant was upset at this and herself also screamed and shouted at Mrs Shin. She accepts she also insulted Mrs Shin in similar terms by saying that Mrs Shin's son hated her (Mrs Shin).
17. I have made these findings for the following reasons. The parties did dispute each other's account of what happened though both agree there was an incident in the bar provoked by the washer at which Mrs Shin raised her voice, followed by an incident in the office at which both agree the Claimant also insulted Mrs Shin.
18. My findings are consistent with the history of the relationship between Mrs Shin and the Claimant. They are consistent with the transcript of the call between the Claimant and Mrs Moody which occurred the next day. Mrs Shin has not given any evidence to dispute the Claimant's account of being screamed at and abused in the bar. Dr Shin says his wife told him she had asked the Claimant why she had drained water in the glass washer, which the Claimant denied but Mrs Shin had not believed her. He accepts that her voice was raised but not that there was a tirade of abuse. The Claimant is consistent in her evidence about Mrs Shin saying she, customers and the Claimant's husband hated the Claimant, though not in relation to where it happened. Sometimes she has said it occurred in the bar and sometimes in the office. I accept it happened, and that it happened in the bar. This is consistent with Dr Shin's evidence that he did not witness it but also with the Claimant's email written as soon as she returned home: "I would like it to go on record that I was verbally abused by Mrs Shin in front of customers this evening regarding something to do with someone emptying some dishwasher...Secondly in front of Dr Shin, she threatened to strangle me ...with hands outstretched towards my neck" (p36).
19. The Claimant later went to the manager's office to hand in cash. Throughout she has been clear about her account that Mrs Shin held out her hands and talked of wanting to strangle her and I accept this occurred. Again this is consistent with the Claimant's contemporaneous email (above). In all the circumstances it is inherently unlikely that Mrs Shin's comments about wanting to strangle the Claimant were intended to be taken literally as a real threat to harm the Claimant. The expression is used to express annoyance and I consider it far more likely that she was using it in that sense to communicate her upset with the Claimant. I find the Claimant exaggerates when she says it was a threat to do grievous bodily harm.

20. Dr Shin's evidence is that it was the Claimant that came into his office shouting and screaming and who was abusive, insulting his family. The Claimant accepts she retaliated to Mrs Shin's conduct and said to Mrs Shin that her son hated her.
21. Returning to the facts, the incident ended with the Claimant being asked to leave. As recorded above the Claimant emailed Mrs Moody late on the day of the incident and asked what was going to be done about Mrs Shin's conduct towards her. Mrs Moody gave evidence that she is responsible for HR at the Respondent.
22. The Claimant also spoke with Mrs Moody on the telephone the next day. She attempted to record the call and a partial transcript is at pages 39-41. The transcript does not start at the beginning of the call and there is much which is recorded as not audible. The Claimant says that prior to the words recorded in the transcript Mrs Moody said that the Shins had met and did not want the Claimant back. It is consistent with the transcript and I accept that was how the call started. It is clear from the transcript that she had said the Claimant had behaved unacceptably and Mrs Moody confirmed during the transcript that she had previously said during the call that Dr and Mrs Shin did not want the Claimant back. She went on to say this was because of the Claimant's insulting behaviour and that she insulted Dr Shin's whole family which she said was totally unacceptable.
19. The Claimant asked for confirmation she had been dismissed ("they...basically sacked me?). Mrs Moody confirmed this was the case. She replied "Well, I s'pose so, yeah". There was then discussion about having it confirmed in writing by Mrs Moody.
20. The Respondent accepts that Mrs Moody told the Claimant she was dismissed but argues that the Claimant manipulated Mrs Moody into saying she was dismissed and that the Claimant knew that only Dr Shin had authority to dismiss. I find that the conversation opened with Mrs Moody, with responsibility for HR, communicating a decision that had been made by Dr and Mrs Shin that they did not want the Claimant back, and that she was not manipulated into doing so. This led to the Claimant seeking clarity of her situation and whether or not she had been dismissed and requesting it in writing.
20. Mrs Moody did then send an email the same day to the Claimant which did not confirm dismissal (or otherwise) but invited the Claimant to attend the next week to discuss the incident on 11 October 2018 with Dr Shin.
21. The Claimant replied requesting a meeting the sooner the better. She said that she assumed her remaining shifts that week had been cancelled but asked if it was a suspension and if it was paid or unpaid. She said "as per my conversation with you, they do not want me to work there any longer so what in your summation is to be discussed?".
22. On 13 October 2017 Mrs Moody replied and offered a meeting to discuss all issues with Dr Shin on 18 October 2017. She forwarded an email from Dr Shin suggesting Wednesday 18 October for the Claimant to "come down to see me". Save that the

Claimant was told she could discuss everything with Dr Shin, her employment situation was not clarified.

23. The Claimant had been removed from all shifts for that week. The Respondent says this was just until the meeting but no clarity was given to the Claimant. The Respondent's case is that this meeting was to be a disciplinary meeting but this was not made clear at all and I find this label is being applied in hindsight.

24. On 15 October 2017 the Claimant wrote an email headed "resignation" in reply as follows:

"...I find it pointless to proceed with any sort of dialogue due to the fact that [Dr Shin] did not, and will not, take any steps to stop the violent threats made to myself by his wife. I find it impossible to work under the constant fear that Mrs Shin can resort to physical violence at any given time against myself taking into consideration the threat of "I want to strangle and kill" you has been made in front of Dr Shin.

For this reason I hereby wish to terminate my employment....with immediate effect.

Taking into consideration that the Rota has been done for next week and I am shown as off all week (no shifts given) is in itself a confirmation that Dr Shin does not want me back which confirms what you told me on the telephone...It is with much regret that leave the hotel after seven years of service however, I can not work under a cloud of constant fear that I could be physically attacked by Mrs Shin and no protection offered..."

25. The Claimant was paid a week's holiday on 20 October 2017 and her P45 recorded a leaving date of 19 October 2017. There was no evidence of further communication between the parties prior to the Claimant contacting ACAS and thereby starting these proceedings on 6 November 2017. The Claimant obtained alternative work on 8 November 2017.

Relevant law

Constructive dismissal

26. Section 95 of the Employment Rights Act 1996 states:

(1) For the purposes of this Part an employee is dismissed by his employer if . . . _

. . .

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

27. The leading authority is *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221.

For section 95 (c) to apply the following must be shown:

- 27.1 a repudiatory breach of contract by the employer (i.e. a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract and which entitles the employee to leave without notice);
 - 27.2 the breach caused the resignation; and
 - 27.3 the employee did not delay so long before resigning that she is regarded as having affirmed the contract and lost the right to treat herself as discharged.
28. There was an implied term in the Claimant's contract of employment as described in *Malik v Bank of Credit & Commerce International* [1997] IRLR 462 that the employer shall not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
29. The law in relation to ordinary unfair dismissal is contained in section 98 of the Employment Rights Act 1996. Section 98 provides:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and**
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**

(2) A reason falls within this subsection if it-

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,**
- (b) relates to the conduct of the employee,**
- (c) is that the employee was redundant, or**
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.**

(3) . . .

(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.

30. In applying section 98(4) the Tribunal are not to substitute their own view for that of the employer. The question is whether the employer's decision to dismiss fell within the range of reasonable responses open to the employer, or whether it was a decision that no reasonable employer could have made in the circumstances. The band of reasonable responses test applies both to the substantive decision to dismiss and to the procedure followed by the employer (*Whitbread plc v Hall* [2001] ICR 699). In considering reasonableness in cases of dismissal for suspected misconduct the relevant test is that set out in *British Home Stores Ltd v Burchell* 1978 IRLR 379, namely whether the employer had a genuine belief in the employee's guilt, held on reasonable grounds after carrying out as much investigation into the matter as was reasonable in all the circumstances of the case.
31. Where any action by the Claimant to any extent caused or contributed to the dismissal the compensatory award may be reduced by such amount as the Tribunal considers just and equitable (s123(6) Employment Rights Act 1996). For conduct to be the basis of a finding of contributory fault under s123(6) it must be culpable or blameworthy (*Nelson v BBC (No 2)*[1980] ICR 110).
32. Where an employer or employee unreasonably fails to comply with the applicable ACAS Code of practice a Tribunal may adjust any award by 25% if it considers it just and equitable to do so in all the circumstances (s207A Trade Union and Labour Relations (Consolidation) Act 1992).
33. The ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015) applies to dismissals for conduct. This provides that employers should carry out any necessary investigations to establish the facts of a case and that an employee should be informed of the basis of a problem and given a chance to state their case. Where an employee feels that disciplinary action is wrong or unjust they should appeal the decision.

Conclusions

Was the Claimant dismissed?

34. I find the Claimant was dismissed in the call with Mrs Moody on 12 October 2017. Mrs Moody had responsibility for HR and was the person tasked by the Respondent

to communicate with the Claimant about the situation. I accept that Dr and Mrs Shin did decide they did not want the Claimant "back" i.e. to return to work after the incident on 11 October 2017. I accept that Mrs Moody communicated this to the Claimant in that call on 12 October. The Claimant sought clarity and Mrs Moody confirmed she had been dismissed. It was Mrs Moody who remained the person to contact the Claimant by email. Mrs Moody was not manipulated into this position by the Claimant. She began the call communicating the decision made by Dr and Mrs Shin.

35. The Respondent seeks to rely on the fact that Mrs Moody's communication that the Claimant had been dismissed was not a dismissal as Mrs Moody did not have the authority to dismiss. Only Dr Shin had such authority. However Mrs Moody was communicating a decision made by Dr Shin and I find it was sufficient to amount to an express dismissal.
36. It is right that the Claimant then wrote emails asking if she had been suspended and then tendering her resignation which could be taken to mean she did not believe she had been dismissed. However, both emails also referred back to the conversation with Mrs Moody and the fact she had been told that Dr Shin did not want her back. At most those emails confirm a lack of clarity about the dismissal which is also consistent with there having been a dismissal by phone but no confirmation in writing as the Claimant had requested.
37. I find the Claimant had been dismissed by phone and it is irrelevant that she remained unsure of this in the absence of confirmation by email.

If not, did the Respondent's conduct on 11 and 12 October 2017 amount to a fundamental breach of contract entitling her to resign? If so, did the Claimant resign in response or did she resign because she realised she would face disciplinary action for her own conduct? Did the Claimant affirm the contract?

38. In case I am wrong in relation to the actual dismissal I have also considered whether, if she was not dismissed expressly, the Claimant was constructively dismissed.
39. I have found that Mrs Shin instigated the incident of 11 October 2017. She was the first to be aggressive and abusive towards the Claimant in front of customers. She told the Claimant she hated her, that customers hated her and that even the Claimant's own husband hated her. I accept that later the Claimant went to the office to hand in cash and the incident continued with Mrs Shin saying words to the effect that she wanted to strangle the Claimant and held her hands out toward her neck. I do not accept that the Claimant was physically threatened but rather this was a turn of phrase and gesture to communicate her annoyance with the Claimant. I accept that the Claimant also participated in the altercation, was also shouting and screaming and also abused Mrs Shin, in front of Dr Shin, saying at minimum that Edward Shin hated his mother (Mrs Shin). Following this, the Claimant's shifts were cancelled and she was told on the phone that she was not wanted back because her behaviour had been unacceptable. She was then invited to a meeting, but there

was no clarity as to whether she remained in employment, whether or not she was suspended or would be paid for the cancelled shifts, or the purpose of the meeting.

40. The question is whether the Respondent's conduct was so serious that it was likely to seriously damage the mutual trust and confidence between employer and employee. Was it so serious that the Claimant could not be expected to tolerate it and was justified in regarding the contract as at an immediate end? Alternatively was it a lesser blow which the Claimant is expected to have absorbed?
41. I find that Mrs Shin was aggressive, angry and insulting to the Claimant. In my view aggression, anger and insults directed at an employee by an employer is normally unacceptable and not something an employee should be expected to tolerate. It is likely to seriously damage the relationship of trust and confidence. An employee ought to be able to have confidence they will be treated respectfully at work. The employer is in a position of power in respect to the employee and the employee needs to have trust and confidence that the power will be exercised appropriately. Even if there is reason for the employer to wish to discuss an issue with the employee this does not provide reasonable or proper cause for insulting an employee and speaking aggressively to the employee.
42. That said in this instance, although not the instigator, the Claimant was also aggressive, angry and insulting to Mrs Shin. Her conduct also upset Dr Shin. There is a sense in which this became an altercation.
43. It was in response to this behaviour by the Claimant that the shifts were withdrawn, the Claimant was told she was not wanted, and left in uncertainty in relation to her position and the proposed meeting.
44. I accept that the Claimant could potentially have been disciplined for her conduct on 11 October 2017. However, as the Respondent acknowledges, this should follow an opportunity to state her case at a disciplinary hearing. Cancelling the Claimant's shifts without explanation (such as confirmation that she was suspended with pay and this was not disciplinary action) and indicating a real possibility that the situation had been prejudged by telling her that she was not wanted back also had the potential to seriously damage the trust and confidence the Claimant had in her employer and, although there may have been reasonable cause for suspension and disciplinary proceedings, there was no reasonable cause for the cancellation of shifts and the communication that she was not wanted back in the absence of proper procedures.
45. I do not find that the Claimant's conduct affects my view that the Respondent's conduct was likely to seriously undermine trust and confidence. I do not consider that the Claimant's conduct gave reasonable or proper cause for the Respondents' conduct. I find that Mrs Shin's conduct on 11 October 2017 alone would be sufficient but that the subsequent conduct exacerbated the situation. The fact that a meeting was pending does not alter my view.
46. However, this is not sufficient to find constructive dismissal. The Claimant must have left in response to the breach. On the face of the resignation message the

Claimant was motivated by the fact that she felt in fear of violence by Mrs Shin because Mrs Shin had threatened to harm her. I have not found that Mrs Shin threatened the Claimant as alleged. That said, the Claimant was clearly resigning in response to her interpretation of Mrs Shin's actions on 11 October 2017, which I have found in breach of contract. She also referenced the removal of shifts and being told she was not wanted back in the resignation message. I therefore find the Claimant did resign in response to the breach.

47. The Respondent raised the issue of affirmation but then did not pursue it in submissions. I do not consider the Claimant affirmed the contract. She resigned four days after the incident of 11 October. There was to be a meeting to discuss the situation. There had been no explanation as to the cancellation of the shifts or the purpose of the meeting, despite her request for such clarity. There had been no contradiction to her emails which set out that she believed she was not wanted back. The matters were not resolved and it cannot be said the Claimant had made a decision to put matters behind her and keep working.

If the Claimant was dismissed/constructively dismissed, what was the reason for dismissal? Was it the potentially fair reason of misconduct?

48. As said above my decision is that there was an actual dismissal and I accept that the reason for the actual dismissal was the Claimant's part in the altercation on 11 October 2017. This was also the reason for at least part of the Respondent's conduct in the event that this was a constructive dismissal.

Was dismissal for this reason reasonable in all the circumstances? Did the Respondent have reasonable grounds to consider the Claimant had committed misconduct, after a reasonable investigation? Did the decision to dismiss fall within the band of responses open to a reasonable employer?

49. It was not reasonable to dismiss the Claimant without following procedures and hearing the Claimant's explanation of the incident, including her account of how Mrs Shin had treated her in the bar. The decision to dismiss did not take account of Mrs Shin's own behavior towards the Claimant that had instigated the incident and that was, I accept, the more serious of the two. Taking account of that very serious provocation and that Mrs Shin's behavior was more culpable without consequence the dismissal was not reasonable.

What compensation is appropriate?

50. The starting point for the basic award is £2160 (12 x £180). The Claimant's starting point for the compensatory award is £400 for loss of security of employment, which was not disputed. The compensatory award otherwise overlaps with the wrongful dismissal award.

If the dismissal was unfair, is it likely the Claimant would have been dismissed for misconduct any way in the near future? Was there any blameworthy conduct by the Claimant that caused or contributed to her dismissal?

51. I do not consider it appropriate to make a reduction to reflect the possibility of a fair dismissal in any event. I accept the Claimant's representative's proposition that, had the meeting gone ahead, the parties might well have reached a resolution as they had done previously when there was a similar incident between the Claimant and Mrs Shin. Both sides accepted that Dr Shin tended to be able to resolve matters. Moreover, as I find that Mrs Shin was the instigator of the incident and the more culpable of the two, it would not be appropriate to find dismissal likely in any event.
52. I do however consider that the Claimant did contribute to her dismissal. The fact that she reacted to Mrs Shin's abuse with similar abuse did contribute to her dismissal. Had she not so reacted it is likely she would not have been dismissed. I have found that both participated in the altercation but that Mrs Shin was the instigator and more culpable. I find that a 30% reduction fairly reflects the balance of culpability. This reduces the basic award to £1512 and the compensatory award to £280.

Was there an unreasonable breach of the ACAS Code of Practice by either party? Should any award be adjusted to reflect this?

52. The Respondent had on either view of the dismissal made a decision that the Claimant was not wanted back prior to holding any kind of procedure. This was an unreasonable breach of the ACAS Code. The Respondent did however at least offer a meeting, albeit too late and without any clarity as to its purpose. As the Claimant's representative himself submitted, had the Claimant attended that meeting, there is a chance that a resolution would have been reached enabling the Claimant to continue working. The breach is not therefore as serious as the employer who follows no process at all. I consider a 15% uplift just and equitable. This applies to the compensatory award giving a revised award of £322.

Is the Claimant entitled to pay in lieu of notice?

53. The parties were in agreement that the Claimant's contract included a PILON clause, entitling her to the full payment of notice despite her mitigation, unless in fundamental breach of contract herself. In fact, the clause set out at paragraph 9 did not place an obligation on the employer to pay the employee a payment in lieu but rather gave them a discretion. Applying *Cerberus Software Ltd v Rowley* 2001 ICR 376 the law is clear that the Respondent having not exercised that discretion

this is a wrongful dismissal claim for damages in the usual way.

54. The Respondent argued in submissions that the Claimant was not entitled to notice due to gross misconduct. I have found the Claimant was shouting and screaming and did insult Mrs Shin, but only after more serious shouting and insults from Mrs Shin directed at her. In those circumstances I do not consider the Claimant's conduct so serious to justify withholding notice and she is entitled to notice pay, subject to her mitigation of loss. She is entitled to notice pay from 13 October 2017 to 8 November 2017 at £176.64 per week. This is approximately 4 weeks' pay of £706.56. The increase due to the breach of the ACAS Code applies to this award. The award is therefore increased by 15% (£105.98) giving a total award of damages of £812.54.

Employment Judge Corrigan
1 October 2018