

JERSEY / JUDGMENT

Mark Regan v RPH Heating Limited trading as Florida Pools and Spas

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL IN THE MATTER: BETWEEN MARK REGAN CLAIMANT AND RPH HEATING LIMITED TRADING AS FLORIDA POOLS AND SPAS RESPONDENT TRIBUNAL JUDGMENT ON LIABILITY Reference: [2023] TRE 195 (A) Dates of Hearing: 11 and 12 June 2024 Before: Mrs Hannah Westmacott, Deputy Chairman For the Claimant: Advocate Jeremy Heywood, BCR Law LLP For the Respondent: Ms Emma Terry, Company Secretary Mr Shane Turrell, Director DECISION The Claimant's claims for compensation for unfair dismissal and damages for wrongful dismissal succeed. A separate judgment will be issued in respect of remedy.

REASONS

Introduction

1. The Claimant presented a claim form to the tribunal on 27 October 2023 claiming compensation for unfair dismissal and damages for failure to give notice of dismissal. The Respondent defends those claims.
2. The Claimant's position is that he was dismissed without being given any notice, following no fair process, and was paid in lieu of only part of his notice period. The Respondent's position is that the Claimant resigned, or, if the tribunal finds that he was dismissed, it had fair reason to dismiss the Claimant due to his conduct.
3. Case management meetings were held on 19 February and 1 May 2024 and a final hearing was held on 11 June 2024 (the "Hearing"). This judgment sets out my decision on the claims following that Hearing, together with the reasons for that decision.
4. On 17 May 2024, the Claimant provided a file of documents for the Hearing (the "File"), which included:
 - (1) the claim and response forms;
 - (2) the first and second case management orders;
 - (3) various witness statements;
 - (4) the additional documents the Claimant wished to refer the tribunal to; and

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- (5) the documents the Respondent provided to the Claimant by way of disclosure.
5. On 7 June 2024, four days before the Hearing, the Respondent provided the following documents to the Respondent and the tribunal by email. These documents had not previously been provided:
- (1) an unsigned letter from the Respondent to the Claimant dated 20 October 2023 (the “48 Hour Letter”);
 - (2) a screenshot of the metadata for the 48 Hour Letter;
 - (3) a printout from a tracking system showing information on a Nissan van (the “Van Tracker”);
 - (4) copies of three timesheets;
 - (5) Mr Turrell’s statement in response to the Claimant’s witness statement; and
 - (6) the statement of an additional witness. Witnesses
6. The File contained statements from the following witnesses, who attended the Hearing and were questioned on the evidence contained in the File:
- (1) The Claimant;
 - (2) Juliana Le Voguer, a friend and previous colleague of the Claimant;
 - (3) Emma Terry, company secretary for the Respondent; and
 - (4) Georgie Mason, an employee responsible for the Respondent’s payroll.
7. The Claimant and Ms Le Voguer’s evidence was consistent and they appeared certain when answering questions put to them.
8. Ms Terry’s evidence was, in some instances, confusing and her recollection was not always clear. That said, there were some points on which she was clear and, where there was a lack of clarity, I am not persuaded that this demonstrated any intention to deceive the tribunal, rather they are points that she did not have sufficient recollection or knowledge of.
9. The Claimant’s representative highlighted the fact that Ms Terry was not clear on whether she was a registered director of the Respondent or not, although she holds herself out to be a director in certain correspondence. Ms Terry explained that she was responsible for managing the company day to day and undertook roles that a director may perform. Whether she was a registered director is not one of the issues I need to determine to make a decision on the claims. Ms Terry not knowing whether she was a registered director does not, in my view, discredit the remainder of her evidence.
10. Where Ms Terry has given evidence on a disputed fact on which I need to make a determination, I have carefully considered the clarity and consistency of all of the evidence relevant to that fact when making my decision.

11. Ms Mason's credibility was brought into question due to a decision of the Royal Court, in which she was found to have deliberately failed to disclose information. Part of the reason that Ms Mason did not receive a prison sentence as a result of that decision was due to a letter provided by the Respondent. Ms Mason confirmed that she was incredibly grateful to Ms Terry for providing the letter, but said she did not feel indebted to her to the extent that she would make up evidence to support the Respondent in this claim.
12. Ms Mason's evidence is on a limited point and, where it relates to a disputed fact, I have carefully considered the consistency of her evidence with all of the evidence related to that fact.
13. The Respondent also provided statements from five further witnesses, four in the File and a fifth on 7 June 2024. None of these witnesses attended the Hearing. In addition, Mr Turrell provided a statement responding to the Claimant's witness statement. While Mr Turrell did attend the Hearing, he was not prepared to be cross examined on his statement. I notified the parties at the outset of the Hearing that I would not be able to place any weight on statements of witnesses who could not be cross examined, as their evidence could not be properly interrogated.
14. Ms Terry explained that Tanya Osmand, one of the Respondent's witnesses who was unable to attend the Hearing, was not there as she was with her grandchild who had recently been diagnosed with a severe illness. Ms Osmand was asked whether she would be prepared to give evidence via video link, but she declined to do so.
15. Mr Turrell said the reason he was not prepared to give evidence and the remaining witnesses did not attend the Hearing was due to intimidation. I explained that, if the Respondent wished to rely on this assertion, the alleged intimidation would need to be properly evidenced. The Respondent did not seek to do this.
16. The Claimant's representative asked me to draw adverse inferences due to the non-attendance of witnesses and the fact that Mr Turrell was not prepared to be cross examined.
17. With regard to Ms Osmand, her evidence may well have been relevant and supported that of Ms Terry. The tribunal and the Claimant were notified by email from the Respondent on 24 May 2024 that Ms Osmand had left Jersey to be with her grandchild and Ms Terry confirmed at the Hearing that she was still with her grandchild. It is understandable that someone in this position would not be prepared to take time away from their grandchild to attend a hearing or give evidence via video link.
18. With regard to Mr Turrell and the witnesses who did not attend due to alleged intimidation, it is my view that their evidence can either be dealt with by Ms Terry or is of limited relevance. In addition, I am not placing any weight on the evidence of those witnesses or of Ms Osmand. Accordingly, I do not believe that there are any adverse inferences left for me to draw as a result of non-attendance of witnesses. Documents

19. The Claimant's Representative objected to the tribunal having any regard to the additional documents that were provided by the Respondent on 7 June 2024. This was on the basis that they were provided only four days prior to a Hearing that had been scheduled over a month before, in respect of claims which had been admitted over three months before. Those documents were discussed at the outset of the Hearing and dealt with as follows:
 - (1) the 48 Hour Letter, its metadata and the Van Tracker are admitted. These are potentially very relevant documents, limited explanation of the information they contain is required and it would be in the interests of justice for me to consider them. Together they amount to less than four pages of text and the Claimant was given sufficient opportunity to interrogate them to ensure he was not prejudiced as a result of their late provision; and
 - (2) the three timesheets are not admitted. Their relevance is less apparent, their contents require further explanation, which has not yet been put into evidence, and the Claimant would require more time and information in order to respond to them. It would not be in the interests of justice for me to consider them.
20. The Claimant's representative made reference to the fact that different documents provided by the Respondent had different versions of the Respondent's logos on them, which the Claimant's representative submits denotes the time period in which certain documents were prepared. Ms Terry explained that this was not the case, as different versions of a new logo were introduced at different times, from September 2023 onwards, on some, but not all documents, depending on which document system they were created in and who they were created by.
21. It has not been necessary for me to determine whether the logo denotes the time period in which any specific document was produced as the documents in question have been discounted for other reasons. However, had it been necessary, I do not believe I have been provided with sufficient evidence on this point to enable me to make such a determination. The submissions made in respect of the logos do not, in my view, demonstrate that all of the Respondent's documents should be disregarded.
22. I considered each of the documents that the parties took me to during the Hearing individually. I have looked at whether the authenticity of each document is evident from the face of it or whether there is accompanying witness evidence to verify it. I have also carefully considered when, how and why each document was prepared and placed different weight on each document accordingly. When necessary, the amount of weight placed on an individual document is explained when referring to the document in the judgment below.
23. The numbers in square brackets below are references to the relevant tabs and pages of the File and are prefixed with a "T" and "P", respectively. Relevant Facts

24. The Respondent provides swimming pool construction and maintenance services. The Claimant was employed by the Respondent as a swimming pool engineer from 17 December 2012 to 20 October 2023. At the commencement of the Claimant's employment the Respondent was owned and managed by Gary Hotton. 1 September to 15 October 2023
25. Sometime in or around September 2023 the Respondent came under new ownership and management, involving Mr Turrell and Ms Terry (the "New Owners").
26. The Claimant is a qualified and experienced diver and initially undertook dives for the Respondent. However, he ceased diving shortly prior to September 2023. On 1 September 2023, Mr Hotton asked the Claimant to provide written reasons to the New Owners explaining why he would no longer dive [T15 P79]. The Claimant provided these reasons [T16 P81] and the Respondent accepted them on 19 September 2023 [T18 P91].
27. However, the Claimant asserts that, after this, the attitude of the New Owners changed towards him. He felt he was no longer wanted in the business. He states there was "nit-picking" with the standard of his work, his suggestions were dismissed, he was criticized for minor timesheet inaccuracies, he felt isolated and he was not given help when he asked for it.
28. On or around 19 September 2023, a meeting was held at the Car Clinic for the Respondent's staff to meet the New Owners. Ms Terry asserts she was told by another member of staff that the Claimant deliberately arrived late to this meeting [T7 P55]. At the Hearing the Claimant said he was, in fact, one of the first to arrive at the meeting and Mr Turrell would have been aware of this as he spoke to Mr Turrell about cars when he arrived.
29. Ms Terry asserts that soon after she started working for the Respondent she was told by various members of staff that the Claimant had the potential to cause issues. She was advised to visit the Claimant on site, which she did as soon as possible and spent approximately 30 minutes with him. She found him friendly and helpful.
30. After that, Ms Terry's interaction with the Claimant was during regular Thursday staff meetings, of which there were approximately 3 or 4 prior to the Claimant's employment terminating. Ms Terry asserts that she noticed the Claimant's behaviour at the meetings became angry, dismissive, unhelpful and unfriendly towards the whole group. She recalls one staff meeting where the Claimant stood behind her with his arms folded and was not prepared to engage when invited to join the staff for pizza and drinks [T7 P56]. 16 to 18 October 2023
31. Ms Terry asserts that during the week commencing 16 October 2023 she attended a client's property with Mr Hotton so he could introduce her to the client. Upon arrival they saw that the pools at that property were in a poor state. They checked who the service engineer was and discovered it was the Claimant. Mr Hotton said he would speak to the Claimant about this.

32. The Claimant met with Ms Osmand and Jay Jarvie on 17 October 2023 and gave his feedback on the issues that had been identified with the pools. On 18 October 2023 the Claimant met with Mr Hotton and Mr Jarvie regarding the pools. The File contains various iterations of the notes of those meetings [T43 P177 to T46 P188]. The Claimant gave evidence at the Hearing that the only page of those meeting notes that was accurate was page 177. The remaining pages contained inaccuracies. For example, on page 180 it attributes the following comment to the Claimant “Those marks ... are bird shit, I am not cleaning up shit.” He asserts he would not have said this as he cleans up bird mess on a weekly basis when servicing pools. Neither the author of these notes, nor any other attendees of these meetings gave evidence at the Hearing. Accordingly, I have placed little weight on the contents of these meeting notes other than page 177, which indicates that, while there were some issues with the pools, the Claimant provided explanations for those issues.
33. The Claimant asserts he took care when servicing pools, he never received any warnings regarding the standard of his work nor complaints from clients and some clients contacted him to ask him to service their pools after he left the Respondent, including the client whose pools had been discussed at the meetings on 17 and 18 October 2023 [T5 P43]. 19 October 2023
34. At the Hearing, Ms Terry asserted that the Claimant had asked to discuss his holiday during the regular Thursday staff meeting on 19 October 2023, but she held off from having this discussion until she had all of the information she needed from Ms Osmond regarding holiday. Ms Terry explained she undertook the day-to-day management of the business and human resources was not her expertise. That was more Mr Turrell and Ms Osmand’s role. She noted that dismissals would fall within Mr Turrell’s remit, rather than hers.
35. In her witness statement Ms Terry asserts that, on the evening of 19 October 2023 she was told by Jon Roberts, a team manager, that he did not trust the Claimant. He felt the Claimant was childish and unprofessional and a divisive member of the team [T7 P57]. At the Hearing, Ms Terry further asserted that other members of staff were also complaining about the Claimant during the regular Thursday staff meeting on 19 October 2023.
36. On the evening of 19 October 2023, Ms Terry asked Ms Osmond to schedule a meeting with the Claimant the next day to discuss his holiday. 20 October Meeting
37. On 20 October 2023 at 7.41am, Ms Osmand sent the Claimant a text message asking him to come to the office for a chat with Ms Terry at 11.30am that morning. Ms Osmand stated the purpose of the meeting was “mainly to go through your holiday request with you.” [T21 P97].

38. At the Hearing, Ms Terry asserted that, on the morning of the 20 October 2023, prior to the meeting with the Claimant, Mr Roberts told her that the Claimant had shut off another employee's, Drew Osmand's, air during a dive (the "Out of Air Incident"). She also spoke to Mr Osmand on the morning of 20 October 2023, who confirmed the Out of Air Incident occurred. At the time, she did not know when the Out of Air Incident had occurred, but she has since found out that it happened in August 2022.
39. Ms Terry had some idea of the safety requirements for scuba diving and was shocked that the Claimant had done this. She felt it was a very serious matter. Upon hearing about the Out of Air Incident, she felt she needed to raise this with the Claimant to gain an understanding of his point of view. However, Ms Terry asserts that she did not intend to dismiss him [T7 P57].
40. At around 9.30am on 20 October 2023, the Claimant accessed his work van, which was at the "Store" some distance away from where he was to meet with Ms Terry at 11.30am that day. He went to the van to retrieve a set of his personal keys that he had left in the van.
41. At around 11.30am on 20 October 2023 the Claimant met with Ms Terry and Ms Osmand (the "20 October Meeting").
42. Ms Terry asserts a document had been prepared to discuss at the meeting which listed the Claimant's holidays, but once the Out of Air Incident was raised, the meeting deteriorated [T7 P57].
43. The Claimant asserts that, at the start of the meeting he was informed it was a disciplinary meeting regarding the Out of Air Incident, which Ms Terry stated constituted gross misconduct. The Claimant said he tried to explain the Out of Air Incident, but Ms Terry would not listen. The Claimant felt he was ambushed at the meeting and not given the opportunity to provide his recollection of events [T5 P44].
44. At the Hearing, Ms Terry accepted that she did not give the Claimant any warning that she would be raising the Out of Air Incident or other performance issues at the 20 October Meeting. She said she did not deliberately ambush him, but she did need to speak to him about these issues. Meeting Minutes
45. The Respondent has provided minutes of the 20 October Meeting, which it submits were written by Ms Osmand from a recording of the meeting on her phone, which was deleted once the minutes had been typed up (the "20 October Minutes") [T48]. I note that Ms Osmand was not available to give evidence on exactly how she prepared the minutes. For example, it would be helpful to know when she prepared them, how clear the recording was, did she add anything from her memory, were there any breaks during the meeting and when and why did she delete the recording.

46. In addition, when asked to consider the 20 October Minutes at the Hearing, Ms Terry said that what was written at the end of the Minutes does not sound like what happened at the end of the meeting. She also noted that the meeting was confusing, people were coming and going from the meeting room and certain things may have been said outside of the meeting room where Ms Osmand was recording the conversation.
47. Any reliance I have placed on the 20 October Minutes has been done bearing the above in mind and I have only relied on what has been said where it is consistent with other evidence. Ms Terry's Notes
48. The Respondent also provided Ms Terry's typed notes of the 20 October Meeting (the "Typed Notes") and copies of her handwritten notes, which she asserts were taken during the 20 October Meeting (the "Handwritten Notes"). At the Hearing, Ms Terry said she prepared the Typed Notes, at the request of the Respondent's legal advisors, after the claim had been issued, based on her recollection after reading her Handwritten Notes.
49. It is evident that the Typed Notes include much more information than the Handwritten Notes. The Typed Notes are no more contemporaneous than Ms Terry's witness statement and any relevant details contained within them could have been included in Ms Terry's witness statement. Accordingly, I have placed little weight on the Typed Notes. Resignation
50. The Respondent argues that the Claimant resigned at the 20 October Meeting.
51. The 20 October Minutes record that the Claimant stated: "I've emptied my van and dangled my keys in front of the CCTV as proof I've given it back and I'm leaving the island tonight there's nothing here for me anymore." ... "I want to leave, I'm giving my notice and I'm leaving the island tonight but I need money. Will you pay me now and my notice?" [T48 P210]
52. Ms Terry states in her witness statement "[The Claimant] said he had emptied his van and dangled his keys in front of the CCTV at the store – he was resigning, and leaving the island." [T7 P57]. When asked at the Hearing whether the Claimant said he resigned, Ms Terry replied that she did not recall him saying he resigned.
53. While the Handwritten Notes are not completely clear, it appears they state "Wants to leave island" and "Req – 1 month pay + hol "just want to leave" ". I cannot see any reference in them to "resignation" or "notice".
54. The Claimant admits saying he would be leaving Jersey, although he said did not mean this and only said it because he was shocked and upset [T5 P45]. He denies saying he is giving his notice or that he had emptied his van or dangled his keys in front of the CCTV camera. Termination Letter
55. The Claimant asserts he was given a copy of a letter at the meeting, from a folder which Ms Terry had on the desk, which is dated 20 October 2023, and states as follows [T20 P95] (the "Termination Letter"): "It has come to my attention that last August you tampered with the

air supply whilst a colleague was diving under water. I believe this to be totally unacceptable behaviour and a cause for great concern regarding your work ethic and puts the safety of company employees at great risk. Due to this and your recent poor work performance, which has been discussed with you earlier this week, I must inform you that your contract of employment with Florida Pools and Spas is to be terminated with immediate effect. By signing this letter, you agree to the above and the company will pay you 4 weeks salary from the date of this letter including any accrued holiday. ... If you choose to dispute this decision, then we will begin a formal disciplinary against you relating to the above.”

56. The Claimant said he was shocked and upset to receive the letter and when Ms Terry asked him to sign the letter, he did so in order to get out of the meeting [T5 P45].
57. Ms Terry states that during the meeting the Claimant “became aggressive, shouted and banged his fist on the table. [The Claimant] is a strong working man and physically intimidating when angry” and she wanted him out of the building as soon as possible [T7 P58].
58. Ms Mason gave evidence that she was in the office next to the room where the meeting between the Claimant and Ms Terry was taking place and she heard the Claimant raise his voice. She said that Ms Terry and Ms Osmand came out of the room saying the Claimant had resigned, he wanted a letter confirming the Respondent would pay him and they needed to get him out of the building as soon as possible. She asserted Ms Terry and Ms Osmand were quickly trying to write and print the letter for him. [T12 P67].
59. The Claimant accepts that he slammed the door when he left the meeting and raised his voice. He states he acted in this way because he was upset at having been dismissed after over ten years of loyal service, over an incident that had occurred and been dealt with over a year earlier [T5 P45].
60. At the Hearing, Ms Terry agreed that the Termination letter was the letter that she asked Ms Osmand to prepare during the meeting. She indicated it was done in a rush and under pressure due to the way the Claimant was behaving and to get him out of the building as soon as possible. She agrees it was her signature at the bottom, but she said she did not read the letter before signing it or giving it to the Claimant.
61. It is not clear when this letter was prepared. Neither the 20 October Minutes nor the Handwritten Notes refer to the letter being prepared or signed. The Claimant says it was pre-prepared and handed to him in the meeting. The Respondent states it was prepared during the meeting at the Claimant’s request as he wanted to know he was going to be paid.
62. The Claimant has requested the metadata for the letter. It is unclear why he would do this if it was going to show the letter was created during the meeting. The Respondents did not provide the metadata as part of their disclosure. The orders made after the second case management hearing required the Respondent to provide it [T4 P38] and the Respondent was given the opportunity to provide it during the first day of the Hearing. However, they

failed to provide it at any stage. On the second day of the Hearing, Ms Terry explained that, while the metadata should have been easy to provide, it was finding the document on the system that was difficult.

63. Even if it is not clear when the Termination Letter was first created or last modified, the content is clear. While the Claimant may have asked for the amount he was going to be paid to be put in writing during the meeting, this does not indicate whether he resigned or was dismissed. It is quite likely someone would ask for this in either event. However, I find that it is highly unlikely that the Claimant would have requested the remaining wording in the Termination Letter and the Respondent has not given evidence that he asked for anything other than for his final pay to be clarified.
64. The Respondent's assertion that the letter was prepared in a rush and under intimidation, in order to get the Claimant out of the building as soon as possible, does not explain the wording used. Even if Ms Terry and Ms Osmand felt under threat of physical danger (which is not a finding I have made) this does not explain the wording of the letter, which clearly states that the Claimant's employment is being terminated due to unacceptable behaviour and poor performance and concludes with the threat of disciplinary action if the Claimant does not accept his employment is terminated. It is unclear why such a threat would be required in the case of a resignation. Keys and CCTV
65. The first mention of the Claimant dangling his keys in front of the CCTV camera, in the documents provided to the tribunal, was in the Response Form, which was filed on 20 November 2023 [T2 P21], when the Respondent submitted that, at the 20 October Meeting "The Claimant informed Ms Terry that he had emptied his work van. He dangled his keys in front of the CCTV cameras as proof that he had handed his work van back and was resigning." This was subsequently evidenced in Ms Terry's witness statement and is also referenced in the 20 October Minutes.
66. On 5 April 2023, the Claimant's representative requested the CCTV footage of the Claimant dangling his keys in front of the camera [T56 P257]. On 7 April 2023, Mr Turrell replied that the CCTV cameras were inoperable at the time and so there is no footage [T56 P259]. Ms Terry confirmed this in oral evidence at the Hearing.
67. In his witness statement dated 10 May 2023 [T5 P45], the Claimant asserts that, at the 20 October Meeting, Ms Terry told him to clear out his van. He said he went straight from the Meeting to his van to clear it out as requested. This must have been sometime after 11.30am. He then dangled his keys in front of the CCTV camera to show he was returning them to the store and, when he left, he held his empty hands up to the camera to show he was not keeping the keys.

68. At the Hearing, the Claimant confirmed that he had not told anyone that he dangled his keys in front of the CCTV camera and that no one saw him doing this. Seemingly, the only way the Respondent could have known the Claimant dangled his keys in front of the CCTV camera, at any stage, was by seeing it on the CCTV footage, which the Respondent claims was inoperable.
69. Based on the evidence that has been submitted on this point I can see two possibilities. Either:
- (1) the Claimant is lying and he did say at the 20 October Meeting that he had already dangled his keys in front of the CCTV camera. However, as the Claimant is asserting he only dangled his keys in front of the camera after the meeting, it would not make sense for him to request the CCTV footage if he knew it would show him dangling his keys in front of the camera prior to the Meeting. Unless, of course, he knew the CCTV was not working, which the Respondent asserts was common knowledge. However, the Claimant asserts he had been told in the summer of 2023 that the CCTV was working and the fact that he bothered to dangle his keys in front of it at all would support this assertion; or
 - (2) the Respondent is lying and the Claimant did not say he dangled his keys in front of the CCTV camera at the 20 October Meeting. However, it would be a significant coincidence for the Respondent to concoct a lie about something that the Claimant actually did a few hours later but the Respondent did not know about. Unless the CCTV cameras were, in fact, working on 20 October 2023, the Respondent saw footage showing the Claimant dangle his keys in front of the camera after the meeting, but said that the Claimant did this before the 20 October Meeting.
70. Ms Terry gave evidence to say that she was not involved in preparing the Response Form, which included the first reference to the keys being dangled in front of the CCTV camera. It was Ms Osmand who assisted in the preparation of the Response Form and the 20 October Minutes. Unfortunately, Ms Osmand was not available at the Hearing to question further on this point.
71. The Respondent asserts the Van Tracker shows that the Claimant went to his van at 9.30am, which the Claimant confirmed he did, and that it also shows this was the only time he accessed the van on 20 October
2023. Having looked at the Van Tracker, I disagree that this is what it shows. The Claimant accepts that the report on the Van Tracker relates to the vehicle he used and I agree that it only shows one entry on 20 October 2023, which states "Ignition On 09:28:10" and "Ignition Off 09:29:39". However, Ignition on and off does not confirm that the van was not accessed and emptied at another time in the day. Most cars can be accessed without the ignition being turned on. In addition, while the report only shows one entry, this alone does not confirm there were no other entries on that day. No witness evidence has been put forward to explain how the system works or how the report was generated.

72. Consequently, all I have to assist in determining this point is the witness evidence of the Claimant against the witness evidence of Ms Terry, one of whom must, at best, be mistaken. Yet both witnesses were clear and consistent on this point when giving their evidence. 73. As this point cannot be easily determined, I have considered whether, even if the Claimant did tell the Respondent he had cleared out his van and dangled his keys in front of the CCTV camera, this would demonstrate that he resigned rather than was dismissed. Intention
74. Assuming the Claimant had told the Respondent he had cleared out his van and dangled his keys in front of the CCTV camera, this would indicate an intention to resign.
75. The intention of Ms Terry at the 20 October Meeting is also a point of contention. Ms Terry asserts she had no intention to dismiss the Claimant at the 20 October Meeting [T7 P57], but the Claimant submits that she had every intention to do so. The Claimant submits that Ms Terry demonstrates this in her witness statement when she says that, if the Claimant had not left, the Respondent would have instigated a disciplinary process, which would have led to dismissal [T7 P58]. After 20 October Meeting
76. Both the Claimant and Ms Le Voguer have given evidence that, later on 20 October 2023, the Claimant called Ms Le Voguer to tell her he had been fired and that she should be careful [T5 P45 and T6 P52].
77. The Claimant also sent a text message to Ms Terry on 20 October 2023 apologizing for slamming the door and stating [T50 P219]: “After 13 years of loyalty it did kinda sting a little. I can understand business is business. ... Thanks for the offer as it will help me finally leave.”
78. The Claimant states his reference to “the offer” in his text message was to the offer to pay notice and holiday pay as set out in the Termination Letter. The Respondent asserts this wording supports its position that the Claimant resigned. While the wording of this email provides no certainty either way, I am of the view that it is more consistent with someone who has been dismissed rather than resigned. 48 Hour Letter
79. One other document that the Respondent relies on is the 48 hour letter. This is a letter which the Respondent submits was delivered to the Claimant by hand. However, there was no evidence that it was delivered (the relevant witnesses did not attend the Hearing so their witness statements could not be relied upon) and the Claimant denies receiving it. 80. The 48 Hour letter is from Mr Turrell and states “I am writing to confirm and acknowledge your verbal resignation during the follow up to your performance review of 20th October at 11.30am with Emma Terry.”
81. Ms Terry asserts that she typed this letter on 20 October 2023 while on the phone to Mr Turrell, who dictated the letter to her. When giving evidence at the Hearing she said that the purpose of the letter was to “follow procedure” and during the Respondent’s closing statement she said it was to “cover our backs”. The wording of this letter is in direct contradiction to the Termination Letter.

82. The Termination Letter was drafted, the Respondent says, at the time the employment was terminated, by someone who was present at the meeting when it was terminated and for the purposes of terminating the Claimant's employment. It is signed by both parties.
83. Contrastingly, the 48 Hour Letter was drafted by someone who was not present when the employment was terminated, after the event and for the purposes of protecting the Respondent. It is unsigned and there is no proof of delivery.
84. Accordingly, I have placed no weight on the contents of the 48 Hours Letter. September 2022 Complaints
85. The File contains an email sent from the email address technical@floridapools.co.uk to Human Resources on 22 September 2022. The email is signed off from Mr Jon Roberts, Small Works Manager ("Mr Roberts' Email") and states [T39 P169]: "I asked [Mr Osmand] to compile a list of the quite frankly childish actions he experienced and his description is as follows. · Turned off the air supply to Dive Tank whilst [Mr Osmand] was searching the shallow end of a pool looking for possible holes. ... · Whilst searching the liner ... which had been serviced the previous day to clean it up ready for the inspection dive, [the Claimant] decided it would be a good idea to throw fruit from the nearby orchard at [Mr Osmand] whilst he was diving in the pool. · ...sitting in an inflatable chair or on the garden chairs rather than being pool side to help if required or better still being in the water as a second pair of eyes. · Whilst diving [in a client's pool, Mr Osmand] was trying to drill out the lights. [The Claimant] decided to remove his mask twice to allow water inside thus stopping his attempts to proceed with the job. · Refusal to give advice or guidance at any point when asked by [Mr Osmand] who was accepting of any experience he could gain. · Was constantly told "You're the diver, you decide!" when asking for advice ..."
86. The Claimant agrees that he turned off Mr Osmond's air supply in August 2022 when Mr Osmand was face down in the water in the shallow end of a pool. The Claimant states he held the back of Mr Osmand's air cylinder and briefly shut off the air supply to simulate an out of air scenario. He asserts Mr Osmand was in no danger at any time and he did not show any panic. They even laughed about the Incident and continued the day as normal [T5 P47].
87. In November 2022 the Claimant met with Mr Hotton who informed the Claimant what had been said to him about the Out of Air Incident and took the Claimant's statement [T5 P47]. The File contains Mr Hotton's notes of a meeting with the Claimant on 24 November 2022 ("24 November Meeting Notes"), which state [T40 P171]: "When asked why he chose to remove [Mr Osmand's] mask whilst he was in a pool, he stated that this was horse play and not designed to be taken any other way. He stated that another member of staff was present (sam) and that they were all laughing, including [Mr Osmand]."

88. The Claimant asserts there was an error in the 24 November Meeting Notes and Mr Hotton was actually referring to the Out of Air Incident and not him removing Mr Osmand's mask. No further action was taken in relation to the events discussed at the meeting on 24 November 2023, Mr Hotton was happy with the comments the Claimant had provided and the events were in the past [T5 P48].
89. At the top of the 24 November Meeting Notes there is a handwritten note which states "Discard after 3 mths". In accordance with section H of the Respondent's Employee Handbook [T33 P148], three months is the period after which a formal written warning would usually be disregarded for disciplinary purposes.
90. The File contains a note of correspondence between Ms Osmand and Mr Osmand on 21 September 2022 in which, when referring to the Out of Air Incident, Mr Osmand states: "I hope/believe they were done in jest but with the way he's been towards me I couldn't say 100% either way." [T38 P167]. The Claimant asserts Mr Osmand never made a formal complaint against him. However, he notes that he and Mr Osmand did have a difficult working relationship, but the change in their relationship had nothing to do with the Out of Air Incident.
91. At the Hearing the Claimant also confirmed that he removed Mr Osmand's mask in a client's pool (the "Mask Off Incident"), as referred to in Mr Roberts' Email. He asserts the Out of Air and Mask Off Incidents simulated two scenarios that formed part of Mr Osmand's dive training. He said he did not warn Mr Osmand that he would be simulating these scenarios and noted that, while the Respondent did not have a procedure in place for training a diver, when Mr Hotton trained the Claimant, Mr Hotton simulated these scenarios in situations to "catch him out".
92. During the Hearing, Ms Terry asked the Claimant whether, when he did his PADI dive qualification, he was warned that these scenarios would be simulated. The Claimant said he undertook his PADI qualification in 2003 and did not renew it at any stage, but, to the best of his recollection, during his PADI training he had learnt certain scenarios, such as his mask or a fin coming off, "as he went along". He cannot remember being told in advance that this would happen.
93. The Claimant also admitted that he said to Mr Osmand "You're the diver, you decide", but he did not say it in the context indicated in Mr Roberts' Email.
94. The Claimant denies that the remaining events referred to in Mr Roberts' email occurred. The Claimant explained at the Hearing that he did not "see eye to eye" with Mr Roberts, asserting that the reason for this was because the Claimant had pulled Mr Roberts up on something he did wrong and embarrassed him in front of a client. Grounds for Dismissal

95. Ms Terry made it clear that it was her view that, had the Respondent undertaken a disciplinary process with the Claimant, the Respondent would have had grounds to dismiss the Claimant. She cites the following as grounds for dismissal: poor performance, falsifying timesheets, not attending pools when asked to, poor attitude towards colleagues and health and safety breaches. [T7 P58]
96. The Respondent has not set out which evidence demonstrated these alleged grounds for dismissal or explained any of them in full. However, from the evidence contained in the File and from comments made during the Hearing, I made certain findings in relation to each ground. These findings are set out below.
97. Poor Performance: this may be a reference to the state of the pools that the Claimant was servicing that Ms Terry and Mr Hotton went to visit on 16 October 2023 and subsequently discussed with the Claimant on 17 and 18 October 2023.
2023. It does not appear to be disputed that the pools were not in a good state. The way in which the Claimant responded when these issues were raised with him does appear to be disputed. The Respondent's evidence in respect of this is the minutes of the 17 and 18 October meetings, which, as mentioned above, I am able to place little weight on. However, even if I was, I still would not be persuaded that this issue was grounds for immediate dismissal.
98. Falsifying Timesheets: the File contains what appears to be a timesheet for the Claimant [T42 P175], which Ms Terry said at the Hearing relates to the issue of falsifying timesheets. The Respondent provided no explanation of how this timesheet has been falsified in advance of the Hearing and I explained it was too late to adduce new evidence on this point at the Hearing. While I have said I would have no regard to the timesheets the Respondent admitted on 7 June 2024, I also note that these were provided without explanation. In addition, I note that all of the timesheets provided for the Claimant were dated in August 2023, which was prior to both Ms Terry and Ms Mason commencing work for the Respondent, so it is not clear how either of them could have given evidence to say these timesheets had been falsified. Accordingly, I am far from satisfied that any timesheets were falsified.
99. Not Attending Pools When Asked: I was not taken to any documents in the File that gave evidence of this, nor did Ms Terry or Ms Mason detail this in their evidence. Accordingly, I am not satisfied that the Claimant failed to attend pools when asked.
100. Poor Attitude Towards Colleagues: Ms Terry and Ms Mason have given some evidence of this, specifically, in relation to the way in which the Claimant acted at the 20 October Meeting, and even the Claimant admitted he raised his voice and slammed the door on this day. Ms Terry has also made reference to other people complaining to her regarding the Claimant's evidence. However, none of this is sufficient to convince me that the Claimant's attitude would have been grounds for immediate dismissal.
101. Health and Safety Breaches: again, the Respondent has not clearly set out what it is referring to here, but I assume it is to the Out of Air Incident and the Mask Off Incident. The Claimant admitted that both these incidents occurred and asserts they simulated two scenarios that formed part of Mr Osmand's dive

training. 102. Having some knowledge of a PADI dive qualification, I am surprised that an out of air or mask off simulation training exercise would be undertaken without any warning that it may happen at some stage during the dive or in a situation where the diver was trying to “drill out lights”. I was also not presented with any evidence that the Claimant was qualified to give dive training. He gave evidence that he had not refreshed his PADI training in nearly 20 years and did not refer to being trained with any other dive bodies. I note that, in his witness statement, the Claimant refers to the notes of Mr Hotton, that were made after the Claimant discussed the Out of Air Incident with him, in which he states the Claimant referred to the incident as “horseplay”. The Claimant does not dispute this. Accordingly, I find that the incidents were not part of a training exercise. 103. However, I also note that the Claimant has given undisputed evidence that Mr Osmand was in no danger at any stage when these incidents occurred. I further note that they took place over a year before the Claimant was dismissed and appear to have been dealt with by the owner at the time as a formal verbal warning. I am, therefore, not persuaded that any health and safety breaches occurred which would be grounds for immediate dismissal.

Conclusion

Was the Claimant Dismissed? 104. The first issue to determine is whether the Claimant shows, on a balance of probabilities, that a dismissal occurred. Was it more likely than not that his employment was terminated by dismissal rather than by resignation? 105. In reaching my decision on this issue, I have had regard to the recent judgment of the Employment Appeal Tribunal in the UK (the “EAT”) in the case of *Mr R. Omar v Epping Forest District Citizens Advice* [2023] EAT 132, which I was helpfully referred to by the Claimant’s representative. I note that this tribunal is not bound by decisions of the EAT, but this judgment has previously been followed by this tribunal (in the case of *Rachelle Campion v The Care Hub Jersey Limited* [2023] TRE 110) and I see no reason to depart from it now. 106. The Omar case involved a situation where an employee resigned in the heat of the moment and, after a later conversation, where it was understood he wished to continue with his employment, he was still asked to confirm his resignation in writing. He then brought a claim for unfair dismissal. In the summary section at the beginning of its judgment the EAT helpfully summarized the applicable legal principles after a full review of earlier case law. The following principles are applicable in the claim I am currently considering: “... a. ... b. ... c. Words of dismissal or resignation, or words that potentially constitute words of dismissal or resignation, must be construed objectively in all the circumstances of the case in accordance with normal rules of contractual interpretation. The subjective uncommunicated intention of the speaking party are not relevant; the subjective understanding of the recipient is relevant but not determinative. d. What must be apparent to the reasonable bystander in the position of the recipient of the words is that: i. the speaker used words that constitute words of immediate dismissal or resignation (if the dismissal or resignation is ‘summary’) or immediate notice of dismissal or resignation (if the dismissal or resignation is ‘on notice’) – it is not sufficient if the party merely expresses an intention to dismiss or resign in future; and, ii. the dismissal or resignation was ‘seriously meant’, or ‘really intended’ or ‘conscious and rational’. The alternative

formulations are equally valid. What they are all getting at is whether the speaker of the words appeared genuinely to intend to resign/dismiss and also to be ‘in their right mind’ when doing so. e. ... f. The point in time at which the objective assessment must be carried out is the time at which the words are uttered. The question is whether the words reasonably appear to have been ‘really intended’ at the time they are said. g. However, evidence as to what happened afterwards is admissible insofar as it is relevant and casts light, objectively, on whether the resignation/dismissal was ‘really intended’ at the time. h. ... i. The same rules apply to written words of resignation / dismissal as to spoken words.” 107. As Ms Terry noted in the Respondent’s closing statement, the Termination Letter is key to this issue. Ms Terry asserts she did not write this letter and gave evidence that she did not even read it. However, she did sign it and give it to the Claimant and the content is clear: the Claimant’s employment is being terminated due to his “unacceptable behaviour” and “poor work performance”. The Respondent only asserts the Claimant required a letter stating his final pay, not the reason for termination. The Letter was written at the request of Ms Terry by someone responsible for the Respondent’s human resources who was also at the 20 October Meeting. It was the Respondent’s decision to include the information about the reason for termination. It is not a long letter and I am not satisfied that Ms Terry felt so intimidated by the way in which the Claimant was acting that she had no choice but to sign it and give it to the Claimant without having any regard to the content. 108. I further note that Ms Terry asserts she did not intend to dismiss the Claimant at the 20 October Meeting. However, following Omar “The subjective uncommunicated intention of the speaking party are not relevant”. Accordingly, even if, as Ms Terry asserts, she was not aware she was dismissing the Claimant and did not intend to do so, providing the Claimant with the Termination Letter is a clear dismissal of the Claimant by the Respondent. 109. However, I have also considered whether the Claimant resigned prior to receiving the Termination Letter. 110. The Claimant denies he resigned verbally, or at all. Ms Terry’s witness statement said “he was resigning” following her reference to the Claimant saying he had emptied his van and dangled his keys in front of the CCTV camera. However, at the Hearing, she said she could not recall him stating he was resigning. While the 20 October Minutes attribute the Claimant with saying “I’m giving you my notice” I have only been able to place limited weight on these Minutes, this is not repeated in witness evidence of the Respondent and is in conflict with the Claimant’s witness evidence. The Handwritten notes do not mention resignation or notice. The Typed notes refer to a request of the Claimant’s “to allow him to resign”, but do not state that he resigned or gave notice. The 48 Hour Letter mentions the Claimant’s resignation but, for the reasons set out above, it is my view that this letter does not accurately reflect what was said at the 20 October Meeting. Accordingly, I find that the Claimant did not say he was resigning or giving his notice. 111. It is agreed that the Claimant said he was leaving the island and, although I have not determined whether or not he said he had cleared out his van and dangled his keys in front of the CCTV camera, I have assumed for the purposes of this judgment that he did. The question then is whether these statements amount to a resignation. They are not a clear resignation but are words that could potentially constitute a resignation. 112. As referred to above, in the case of the dismissal, the intention of the Respondent is not relevant. Similarly, the intention of the speaking party, the Claimant, in the case of words that may constitute a resignation is not relevant. However, “the subjective

understanding of the recipient is relevant but not determinative”. Accordingly, I can consider, but the issue will not be determined by, the Respondent’s understanding of what was said. 113. Ms Terry gave evidence that she understood the Claimant to be resigning. However, this does not explain why the Termination Letter was drafted in the terms that it was. Why would the letter state the Claimant’s employment was being terminated due to his behaviour and performance and include a threat if he refused to accept the termination, if the draftsman understood he had just resigned? 114. Following Omar, “words that potentially constitute words of ... resignation, must be construed objectively in all the circumstances of the case”. It must be apparent that the Claimant used words that constitute immediate resignation or immediate notice of resignation, words that show an intention to resign at some point in the future are not sufficient. It must also be apparent that the resignation was “really intended” at the time the words were spoken. I can consider what happened after the words were spoken, so long as it is relevant and casts light on whether the resignation was really intended at the time. 115. It is my view that it is not apparent from the Claimant saying he was leaving the island and indicating that he had cleared out his work van and returned the keys that he was giving his immediate resignation or immediate notice of resignation. It may be that he expressed an intention to resign at some stage, but this is not sufficient. As to whether the Claimant “really intended” to resign, I am of the view that the wording used, when considering all of the circumstances of the case, including the Termination Letter being given to the Claimant after he had allegedly resigned, indicates that it would not be apparent to a reasonable bystander that the Claimant had really intended to resign. 116. It may be that, in another case with different circumstances, clearing out a work van and demonstrating that keys had been handed back might be sufficient to show that a resignation was “really intended”. For example, if what was said and done around these actions was more consistent with a resignation than a dismissal. However, in this case, it is not. 117. In any event, even if I had found that the Claimant resigned prior to receiving the Termination Letter, the Respondent’s reference to the Claimant giving notice would indicate that, if there had been a resignation, the Termination Letter would have been provided in the Claimant’s notice period. Accordingly, the Respondent would have dismissed the Claimant during his notice period, so there would still have been a dismissal. As the Termination Letter states that the Claimant’s employment is being terminated with immediate effect (i.e. without notice), a resignation submitted after the Termination Letter was provided would not be relevant as the contract of employment terminated immediately upon the Claimant receiving the Termination Letter. 118. Consequently, I find that, on a balance of probabilities, it is more likely that the Claimant was dismissed rather than his employment terminating by resignation. Reason for Dismissal 119. As I have found that the Claimant was dismissed, I must consider the reason for dismissal. Article 64(1) of the Employment (Jersey) Law 2003 (the “Law”) provides that an employer must prove the reason for any dismissal. 120. The Termination Letter states the Claimant’s employment was terminated due to unacceptable behaviour and performance issues. Ms Terry gave clear evidence that it was the Out of Air Incident that was at the forefront of her mind during the 20 October Meeting. It also appears to be undisputed that she referred to performance issues during the 20 October Meeting. While the Claimant denies that his behaviour was unacceptable and that his work was poor, he does not dispute that these were the reasons for which he was dismissed. Accordingly, I find that

these are the reasons for dismissal and that they relate to the Claimant's conduct. 121. In accordance with article 64(3)(b) of the Law, conduct is a potentially fair reason for dismissal. Fairness of Dismissal 122. As I have found that the reason for the Claimant's dismissal was conduct, I must consider whether the dismissal was fair or unfair in accordance with article 64(4) of the Law which states: "Where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall –

- (a) depend 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) be determined in accordance with equity and the substantial merits of the case." 123. The tribunal in the case of *Gordon Mullan v Newtel Limited* [2020] TRE 136 summarised the relevant considerations in more detail as follows: "33. The key principle is that it is not for the Tribunal to substitute its own opinion for that of the employer. Rather, the Tribunal's role is to determine whether the employer has acted in a manner in which a reasonable employer might have acted in the circumstances of the case. A summary of the relevant authorities is to be found in the decision of the Royal Court in *Voisin v Brown* [2007] JLR 141, which was considered in *JT (Jersey) Limited v Wood* [2016] JCA 183.
34. As stated in *Voisin v Brown*, it is important to note that it is not the case that any failure to follow the procedural requirements will necessarily result in a finding of unfair dismissal. As indicated in *Polkey v AE Dalton Services Limited* [1988] AC. 344 in passages approved by *Voisin* and referred to in *JT (Jersey)*. "If an employer has failed to take the appropriate procedural steps in any particular case, the one question the industrial tribunal is not permitted to ask in applying the test of reasonableness posted by [Article 64(4)] is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken. On the true construction of [Article 64(4)] this question is simply irrelevant. It is quite a different matter if the tribunal is able to conclude that the employer himself, at the time of dismissal, acted reasonably in taking the view that, in the exceptional circumstances of the particular case, the procedural steps normally appropriate would have been futile, could not have altered the decision to dismiss and therefore could be dispensed with. In such case the test of reasonableness under [Article 64(4)] may be satisfied". Lord Mackay..... was of a similar view.. If the employer could reasonably have concluded in the light of the circumstances known to him at the time of dismissal that consultation or warning would be utterly useless he might well act reasonably even if he did not [carry out a consultation]. Failure to observe the requirement...relating to consultation or warning will not necessarily render a dismissal unfair. Whether in any particular case it did so is a matter for the industrial tribunal to consider in the light of circumstances known to the employer at the time he dismissed the employee."

35. The Tribunal must therefore determine whether the process which was adopted was one that a reasonable employer might have adopted in the circumstances of the case.
36. In this case the Claimant was dismissed because the Respondent believed his actions amounted to gross misconduct.
37. Gross misconduct is conduct so serious that it justifies instant dismissal without notice. Exactly what amounts to gross misconduct will depend on the facts of each case but it must constitute an act or a series of acts, which fundamentally undermined the employment contract.
38. Where misconduct is the reason for dismissal whether or not it was gross misconduct it is helpful to take note of the test established in *British Home Stores Limited v Burchell* [1980] 1 CR 303, notwithstanding that it is primarily a test to determine fairness in unfair dismissal cases. The test requires the employer to show that (i) he believed the employee was guilty of misconduct; (ii) he had in his mind reasonable grounds upon which to sustain that belief, and (iii) at the stage at which he formed the belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.” 124. The Respondent did not follow any disciplinary or dismissal procedure in respect of the 20 October Meeting. It gave the Claimant no warning of what was raised at the 20 October Meeting and did not undertake any, or at most only very little, investigation into the conduct that the Termination Letter mentions as the reason for termination. 125. With regard to the Out of Air Incident, Ms Terry spoke with the other person who had been involved briefly on the morning of the 20 October Meeting. She did not, at that stage, know when the incident had occurred. She has since found documents that relate to it, but did not find or consider these prior to the Claimant being dismissed. With regard to the performance issues, these had been discussed with the Claimant in the two days before he was dismissed and he had had the chance to give some feedback. However, the Respondent gave no evidence that this feedback had been considered in advance of his dismissal. 126. An employer who does not follow any process can be considered to have acted reasonably if they could reasonably have concluded, in the light of the circumstances known to them at the time, that following any procedure would be utterly useless. Ms Terry made it very clear that, based on the information she had, she felt the Out of Air incident was incredibly serious. It is possible that a reasonable employer would have concluded that it would be highly likely that the Claimant would be dismissed because of it, regardless of any procedure followed. However, despite its potentially serious nature, I do not believe that a reasonable employer would have concluded that it would be utterly useless to undertake some further investigation into the matter. Ms Terry accepted herself, during the Respondent’s closing statement at the Hearing, that the Respondent made procedural mistakes. 127. Accordingly, I find that taking the view that the procedural steps that would normally be appropriate could be dispensed with does not fall within the range of responses that a reasonable employer could have given when faced with the same circumstances as the Respondent. 128. I note that Ms Terry asserts that the Claimant would have been dismissed in any event due to a number of other

issues which are discussed in paragraphs 97 to 103 of this judgment above and I have explained why the Respondent has failed to establish that any of these issues would have led to immediate dismissal. 129. Consequently, I find that the dismissal is unfair and the Respondent shall be ordered to pay compensation to the Claimant in accordance with article 77F of the Law. Failure to Give Notice 130. The Claimant had between ten and eleven years' continuous employment with the Respondent and, as I have found that he was dismissed, in accordance with article 56(1)(j) of the Law, he was entitled to ten weeks' notice of that dismissal. The parties agree that the Claimant was not given any notice of termination of his employment. The Respondent is, therefore, also liable to pay the Claimant damages for losses suffered as a result of its failure to give that notice. Remedy 131. The parties agree that the Respondent paid an amount to the Claimant after termination of his employment, some of which may go towards a reduction in any amount awarded to the Claimant in respect of the claims for which I have found the Respondent to be liable above. However, the amount of that reduction is disputed on the basis that the parties disagree on the amount of holiday pay the Claimant was either owed or overpaid when his employment terminated. I have not addressed this dispute in this judgment. 132. In addition, there is a question in relation to whether there is a requirement for the Claimant to mitigate any loss he suffered in respect of the Respondent's failure to give notice, which I have not dealt with in this

judgment.

133. A separate judgment in relation to the amount of compensation and damages that are to be awarded, considering any reduction for amounts already paid and whether there is a requirement to mitigate, shall be issued in due course. Mrs H Westmacott, Deputy Chairman
Sent to the parties on: 12 July 2024

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