THE INDUSTRIAL TRIBUNALS

CASE REF: 21662/20

CLAIMANT: **Eugene McReynolds**

RESPONDENT: **Robinson Services Laundry LTD**

DECISION

The unanimous decision of the tribunal is that the claimant was dismissed by the respondent within the terms of Article 127 of the Employment Rights (Northern Ireland) Order 1996 and that the dismissal was unfair. The respondent shall pay the claimant compensation of **£10,639.23**.

Constitution of Tribunal:

Employment Judge: **Employment Judge Bell**

Members: **Ms D Adams**
Mr M McKeown

Appearances:

The claimant was represented by Mr Eugene Neeson, friend of the claimant.

The respondent was represented by Mr Friel, Barrister-at-Law instructed by Worthingtons Solicitors.

1. The claimant complained in his claim that he had been unfairly dismissed by the respondent by way of constructive dismissal by reason of conduct by the respondent leading to the claimant's resignation on 13 September 2020, that the respondent had failed to pay him a redundancy payment, notice pay and to provide him with itemised payslips.

2. The respondent in its response denied all the claimant's claims, in particular, that any unilateral contractual variation had taken place.

ISSUES

3. The issues to be determined by the tribunal were:-

A. Was the claimant dismissed by the respondent within the terms of Article 127 of the Employment Rights (Northern Ireland) Order 1996 [**ERO**]?

(i) Was there a breach of contract by the respondent?

(ii) Was the breach sufficiently important to justify the claimant resigning or the last in a series of incidents which justify his leaving?

(iii) Did the claimant leave in response to the breach and not for some other unconnected reason?

(iv) Did the claimant delay too long in terminating the contract in response to the respondent's breach?

B. If so, was the dismissal unfair within the terms of Article 130 ERO?

If so:

C. What remedy is appropriate?

Otherwise:

D. Is the claimant entitled to a payment in lieu of statutory notice/ statutory redundancy payment?

And:

E. What particulars ought to have been included in any written itemised payslips which the respondent failed to provide to the claimant before or at the time of payment?

SOURCES OF EVIDENCE

4. The tribunal considered the claim, response, agreed bundle of documentation, witness statements and sworn oral testimony from the claimant, Damien McReynolds (the claimant's brother) on behalf of the claimant and from Stephen Woods (Operations Director), Pamela Fullerton (Laundry Manager), and Jennifer Jackson (Production Operative Supervisor) on behalf of the respondent.

5. The tribunal found the claimant and Mr D McReynolds in particular straightforward and truthful in their evidence, Ms Fullerton and Ms Jackson in relation to what they knew honest but Mr Woods to have prevaricated considerably.

FINDINGS OF FACT

6. On consideration of the evidence relevant to the issues before it, the tribunal made the following findings of fact on the balance of probabilities:-

7. The claimant lives in the home where he grew up, with his mother, for whom he provides light caring duties. He is a quiet, docile, compliant individual. The claimant is not officially classed as a vulnerable adult but it is accepted per his brother's

evidence that he could be considered as approaching that threshold. The claimant is in general keen to please others, rarely shows his own initiative and needs to be told what to do.

8. In 1993 the claimant was placed as part of a youth employment scheme in the Waveney Laundry in Ballymena and later offered and accepted employment as a general production worker (his first job) on 1 July 1993 without formal interview. The respondent purchased Waveney Laundry in 2007 and subsequently moved the Laundry to new premises in 2009 to integrate it with the rest of the respondent's business. The claimant's employment consequently transferred to the respondent but his contractual duties remained fundamentally the same. The claimant was employed by the respondent as a Laundry Operative and the duties required of him were to operate laundry machines to launder mats or towels; to load and unload washing and drying machines and to stack mats/towels as required. The claimant's duties did not vary. No driving duties were ever carried out by the claimant. The claimant was contracted for up to 37.5 hours per week. The claimant was hard-working, loyal, trusting and endeavoured to do all that was asked of him, so much so, that he regularly worked over his unpaid breaks (and in excess of his contractual hours) to ensure completion of his duties, but was very much content in his job. The claimant had a good working relationship with all staff, particularly Ms Fullerton, but saw little of Mr Woods who was based in a different building.

9. In 2013 the claimant agreed a change with the respondent from day time working to the night shift (11pm to 7am) which suited his circumstances at the time to allow him help care for his father. On the night shift the claimant let himself in and out of the Laundry premises (as a key holder) and carried out his duties alone. The claimant often saw and spoke briefly with Ms Fullerton at the end of his shift, on her arrival at work. The claimant did not work on Sundays.

10. In March 2020 arising from the Covid 19 pandemic the claimant was placed on furlough leave.

11. Around late April 2020 the respondent began to consider making redundancies and restructuring its business.

12. On 19 May 2020, Mr Woods telephoned the claimant (and other Laundry production staff individually). Mr Woods spoke from a pre-prepared script and advised the claimant of a potential risk of redundancies in relation to 20 roles within Laundry Production because of a need to restructure arising from a downturn due to the pandemic, advised of a scoring selection exercise to be carried out and date for voluntary redundancy requests to be made by.

13. On 2 July 2020 the claimant received a text from Ms Fullerton asking him to come in for a meeting the next day. The claimant told his brother that his job was at risk, Mr McReynolds asked the claimant to keep him informed about how the meeting went.

14. At a meeting on 3 July 2020 Mr Woods (following a pre-prepared script) updated unaffected staff including the claimant on the furlough situation and upon proposed restructuring whereby other employees from the laundry linen cleaning part of the business would transfer to a different company. Mr Woods confirmed that the respondent would continue to provide Mat and Hygiene services but some further restructuring might still be needed. The claimant approached and spoke briefly with

Mr Woods afterwards. Mr Woods told the claimant the night shift would probably be discontinued, enquired whether the claimant would be happy to work on the day shift and if not should let him know as soon as possible to be included for consideration in redundancy. The claimant was pleased at the proposed change to day shift, confirmed this to Mr Woods and left work happy in the belief that his job remained safe.

15. The claimant later told his brother that everyone else's jobs were moving to a different company but he had been told the respondent wanted for him to stay in its Antrim Laundry and to come off the night shift.

16. On 23 July 2020 the claimant attended a manual handling course arranged by the respondent in anticipation of changes.

17. On 12 August 2020 the claimant received a text message from Ms Fullerton, *Need you back in for 2 or 3 weeks starting tomorrow 5pm-12am thanks*. The claimant worked as required by the respondent on 13, 14, 17, 19, 20 and 21 August 2020.

18. The claimant told his brother he had been asked to go back to work for three weeks to see how things would work out.

19. On 20 August Mr Woods instructed the respondent's HR officer to advertise for a laundry/hygiene operative for 40 hours a week.

20. At the beginning of September 2020 the claimant received a number of telephone calls from Mr Woods in which Mr Woods informed the claimant that the night shift on which he worked would no longer be running. Mr Woods offered the claimant a day shift job with the hygiene team driving a works van three or four hours per day with remaining time to be spent working in the Laundry. The claimant told Mr Woods he would not be capable of performing a driving job around Belfast or Northern Ireland. Mr Woods informed the claimant that the van would be equipped with a satnav. The claimant said he would not be capable of using a satnav. Mr Woods offered to provide the claimant training. The claimant responded that even with training he would still not be confident to use a satnav or to drive a van around Belfast or Northern Ireland. Mr Woods advised the claimant if the position did not suit that he could take redundancy. The claimant understood from his conversation with Mr Woods the alternative role would be for 28 hours per week. The claimant was not familiar with the buddy system used by the respondent in training drivers to carry out their duties and unaware of Mr Woods having made any reference to it during their conversation. No written record of the telephone conversation was kept and no written details of the alternative job offered were provided to the claimant by Mr Woods.

21. The claimant on considering the alternative job offered to him felt dread at the thought of driving a van around Belfast and Northern Ireland every day, being particularly fearful of driving a works van on congested city streets and of getting lost. The claimant felt that he would be unable to cope with multi drop driving, going in and out of different premises and dealing with many different people.

22. On or about 3 September 2020 the claimant again spoke with Mr Woods. The claimant told Mr Woods the alternative job discussed was unsuitable for him as it was a multi-drop van driving job that was beyond his capabilities and he had no

choice but to take redundancy. Mr Woods replied:

> *I'm sorry Eugene but I can't give you redundancy as there is a job there for you, but I'll tell you what I could do. Write a resignation letter, saying that you are resigning and that your last day will be [Sunday] 13th September, and I will get you £1,500, but I'm only doing this because you're a good person, but don't tell anyone else, or you'll not get it*.

Mr Woods confirmed in his testimony that he had told the claimant to tell no-one of the offer because it was a *private matter*.

23. The respondent as confirmed by Mr Woods under cross examination did not at that time have sufficient work to sustain the claimant in the Laundry Operative role he had been carrying out. The respondent hoped the claimant would accept the proposed alternative role offered to him and had not given consideration to otherwise returning the claimant to furlough leave.

24. The claimant next spoke to his brother a day or two after the discussions with Mr Woods and told him that his job was no longer there. Mr McReynolds asked the claimant what his options were, the claimant replied he had been advised he could either take his redundancy or another job with the respondent that involved driving a van equipped with satnav around various locations in Northern Ireland, collecting soiled hygiene products. Mr McReynolds asked what training there was, the claimant was unable to answer.

25. The claimant mistakenly convinced himself following his conversation with Mr Woods that Mr Woods had said £15,000 rather than £1,500.

26. Mr McReynolds considered the claimant to be a nervous driver who (albeit holding a category B driving licence) drives only automatic cars; to be terrified of city driving; to never have driven around Belfast unaccompanied or used a satnav; only comfortable driving familiar routes close to home and work; to never to have dealt directly with customers and was of the firm opinion that the claimant would be utterly incapable of doing the driving job.

27. On hearing from her husband of the claimant's work situation, the claimant's sister in law the following day carried out an online search to see what vacancies were advertised locally and noted two, one for a 16 hours per week cleaning job and another related to egg production and told her husband about the positions. Mr McReynolds in turn informed the claimant of the locally advertised vacancies that his wife had seen advertised online. The claimant did not make an application for either job, or for any other job at that time.

28. The claimant informed his brother and family members that he would be receiving a redundancy payment of £15,000 on leaving his employment. The claimant did not discuss with anyone that he had been asked to write a resignation letter nor did he seek any advice thereon.

29. Ms Fullerton after holiday leave returned to work on 3 September 2020. Mr Woods told Ms Fullerton that he had offered to pay the claimant £1,500.

30. The claimant thereafter in separate conversations regarding proposed changes to

his job with Ms Fullerton and with Ms Jackson mentioned that his brother had found other potential jobs closer to home. The claimant had not applied for or been offered any of those jobs.

31. At 06:26 (GMT+ 00:00) on 9 September 2020 Mr Woods sent an email to Ms Fullerton:

How many hours annual leave do we need to pay Eugene?

Will I add that into my email when requesting the £1,500?

At 07:56 Ms Fullerton replied to Mr Woods:

64 hours

32. Whilst at work on 9 September 2020 the claimant gave to Ms Fullerton a resignation letter which he had prepared by himself, it set out as follows:

> 'DEAR PAMELA
>
> With Regret I am handing in my notice finishing on 13th Sept 2020. I had a great 26th yrs working in the Laundry but I feel I have to move on and face new challenges. I would like to thank you and stephen – what you have done for me its help me changing my shift so I could ~~help~~ help my mother to look after my ~~father~~ Father.
>
> Yours faithfully
> …'

33. Ms Fullerton was not surprised to receive the claimant's letter but disappointed he would not try the new role offered. Whilst the claimant was present Ms Fullerton's telephone rang and the claimant heard her say, *he's just handed it to me now*. Ms Fullerton despite their working relationship of 27 years did not seek to enquire whether the claimant had in fact secured other employment out of possibilities previously mentioned. The claimant then went back to his laundry duties. Later that day the claimant was informed that he would not be required for work again that week.

34. No written communication regarding redundancy was provided by the respondent to the claimant at any stage.

35. On subsequently checking his bank account the claimant discovered the last payment received from the respondent was for £1,500 not £15,000. The claimant felt shocked and was embarrassed and ashamed at having told his family and friends he would be receiving £15,000.

36. About a week later upon persuasion the claimant reluctantly confided in his brother that he thought he had got confused about the amount Mr Woods had told him he would get and in order to get the payment he had been told to write a resignation letter with a specific finishing date and the date for it to be handed in.

37. Around late September 2020 after the last of his money from the respondent ran out

the claimant applied for universal credit with the help of his brother and began to apply for other jobs. He was unsuccessful at interview on 1 October 2020 for a Laundry Operative position but in early December 2020 secured a job as a Production Line Operative.

38. The claimant presented his claim to the Office of the Tribunals on 4 October 2020.

39. Payslips for payments made by the respondent to the claimant for the period June 2015 to September 2020 were presented in the hearing bundle, no issue was raised by the claimant in relation to the content thereof or declaration sought.

40. On 19 November 2020 the respondent's HR Officer sent an email setting out an advertisement for Laundry Operatives for the respondent.

RELEVANT LEGISLATION

41. Under Article 126 of The Employment Rights (Northern Ireland) Order 1996 [**ERO**] an employee has the right not to be unfairly dismissed by his employer.

42. Circumstances in which an employee is dismissed by his employer include at Article 127(c) ERO if the employee terminates a 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.

43. The Court of Appeal in ***Western Excavating (EEC) Ltd v Sharp [1978] ICR 221*** confirmed the correct test to be applied when determining whether there has been a constructive dismissal is a 'contract test' not one of 'reasonableness'. It is not enough for the employee to leave merely because his employer acted unreasonably. There can be no unfairness until there has been a dismissal. Lord Denning in relation to the contract test set out:-

> *If the employer is guilty of conduct which is 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, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.*

As such, four conditions must be met for an employee to be able to claim constructive dismissal:-

(1) There must be a breach of contract (actual or anticipatory) by the employer.

(2) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving.

Possibly a genuine, albeit erroneous interpretation of the contract by the employer will not be capable of constituting a repudiation in law.

(3) The employee must leave in response to the breach and not for some other, unconnected reason.

(4) The employee must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.

Lawton LJ added whilst he did not find it either necessary or advisable to express any opinion as to what principles of law operate to bring a contract of employment to an end by reason of an employer's conduct, *Sensible persons have no difficulty in recognising such conduct when they hear about it*, and, *what is required for the application of this provision is a large measure of common sense*.

44. Although the correct approach to constructive dismissal is to ask whether the employer was in breach of contract and not whether the employer acted unreasonably, if the employer's conduct is seriously unreasonable this may provide sufficient evidence that there has been a breach of contract (***Brown v Merchant Ferries Ltd [1998] IRLR 682 NICA***).

45. Requiring an employee to cease doing what has always been his principal job to take up a new role will almost always be capable of being a repudiatory breach of contract. Whether the breach is sufficiently material so as to be repudiatory is to be judged objectively by reference to its impact on the employee. *Whether the proposed change was justified* is a different and distinct question. Once a breach is sufficiently material so as to be considered repudiatory, the underlying motive for it becomes irrelevant. (***Hilton v Shiner Ltd [2001] IRLR 727, EAT***).

46. A constructive dismissal may arise where the employee leaves in response to an anticipatory breach, i.e. a situation where the employer indicates that he is proposing to break the contract at some point in the future (***Harrison v Norwest Holst Group Administration Ltd [1985] IRLR 240*, *[1985] IRLR 668, CA***).

47. If a party's conduct is such as to amount to a threatened repudiatory breach, his subjective desire to maintain the contract cannot prevent the other party from drawing the consequences of his actions (***Federal Commerce and Navigation Co Ltd v Molena Alpha Inc [1979] AC 757***).

48. A constructive dismissal is *not* necessarily unfair and a tribunal that makes a finding of constructive dismissal will err in law if it assumes that the dismissal is unfair without making explicit findings on the reason for the dismissal and whether the employer has acted reasonably in all the circumstances. This can cause conceptual problems for the employer with (1) identifying the 'reason or principal reason for the dismissal' because the employer is not actually the terminator of the employment and (2) running apparently inconsistent defences ('I did not dismiss him, but anyway it was fair'), but these are problems that the tribunal must address as best it can (*Harvey on Industrial Relations and Employment Law* 3. Termination by the Employee: Constructive Dismissal, A. INTRODUCTION TO TERMINATION BY THE EMPLOYEE [401.01]).

49. An employee who is dismissed shall be regarded as unfairly dismissed if one of the statutory dismissal and disciplinary procedures applies in relation to the dismissal procedure, it has not been completed, and, the non-completion of the procedure is wholly or mainly attributable to a failure by an employer to comply with its requirement (Article 130A (1) ERO).

50. The Statutory Dismissal and Disciplinary Procedures (SDDP) are set out under Schedule 1 of the Employment (Northern Ireland) Order 2003. The Standard Procedure which applies when an employer contemplates dismissing or taking relevant disciplinary action against an employee (Regulation 3 of the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004) consists in summary of three steps; requiring an employer to provide an employee at Step 1 with a written statement of grounds for action and an invitation to a meeting; at Step 2 a meeting; and at Step 3 an appeal. General circumstances in which the statutory procedure does not apply or are treated as being complied with include where it is not practicable for the party to commence the procedure or comply with the subsequent requirement within a reasonable period (under Regulation 11 (3)).

51. Otherwise, whether a dismissal is fair or unfair is to be determined under Article 130 ERO as follows:-

> *"(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 reasons (or if more than one the principal reasons) for the dismissal, and*
>
> *(b) that it is either a reason falling within paragraph 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 paragraph if it –*
> *…*
>
> *(c) is that the employee was redundant,"*

52. Circumstances in which an employee is taken to have been dismissed by reason of redundancy include where the dismissal is wholly or mainly attributable to the fact that the requirements of that business for employees to carry out work of a particular kind, have ceased or diminished or are expected to cease or diminish (Article 174 ERO).

53. Where a potentially fair reason is shown under Article 130(1) ERO, then determination of the question of whether the dismissal is fair or unfair, having regard to the reason shown by the employer, depends on whether 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 shall be determined in accordance with equity and the substantial merits of the case (under Article 130 (4)).

54. In assessing reasonableness, a failure by the employer to follow a procedure in relation to the dismissal of an employee (*other than the statutory dismissal procedure*) shall not be regarded as by itself making the employer's action unreasonable if he shows (on the balance of probabilities) that he would have decided to dismiss the employee if he had followed the procedure (Article 130A (2) ERO).

55. Where an Industrial Tribunal finds the grounds of complaint of unfair dismissal are well-founded the Orders it may make are set out at Articles 146 ERO and include reinstatement, re-engagement and otherwise compensation. How compensation is to be calculated is set out in Articles 152 to 161 ERO.

56. The overriding duty imposed on a tribunal on a finding of unfair dismissal is to award compensation which is just and equitable in the circumstances.

57. The case of ***Polkey v AE Dayton Services Ltd [1987] IRLR 503, [1988] ICR 142, HL*** makes it clear that if a dismissal is procedurally defective, then that dismissal is unfair but the tribunal has a discretion to reduce any compensatory award by any percentage up to 100% if following the procedures correctly would have made no difference to the outcome. It requires consideration of what the particular employer (not a hypothetical reasonable employer) would have done in the circumstances and assessment of: - if a fair process had occurred whether it would have affected when the claimant would have been dismissed; and the percentage chance a fair process would still have resulted in the claimant's dismissal. The Article 130 (2) ERO and *Polkey* exercises run in parallel and will often involve consideration of the same evidence, but must not be conflated. There can be no *Polkey* deductions of the basic award.

58. An uplift is required to be applied to awards (in specified jurisdictions, including unfair dismissal) where an applicable statutory procedures was not completed before the proceedings were begun, and it wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure, in which case it shall (save where there are circumstances which would make an award or increase of that percentage unjust or inequitable) increase any award which it makes to the employee by 10% and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50% (Article 17 of the Employment (Northern Ireland) Order 2003).

59. A claimant will normally be required to give credit for an ex gratia payment (***Digital Equipment co Ltd v Clements (no 2) [1999] IRLR 134 (CA***). A payment the claimant would have received had he not been unfairly dismissed will not factor into reducing the losses suffered by the claimant (***Babcock FATA ltd v Addison [1988] IRLR 173*** and ***Roadchef v Hastings [1988] IRLR 142***).

Written Itemised Pay Statements

60. Under Article 40 ERO an employee has a right to be given by his employer at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement. Where an employer does not comply reference may be made to an industrial tribunal under Article 43 ERO to determine what particulars ought to have been included.

SUBMISSIONS AND APPLYING THE LAW TO THE FACTS FOUND

61. The respondent's key submissions were:

- That no breach of contract had occurred and in the event that one had that it was not sufficiently serious or did not go to the core of the contract of employment.

- That the claimant had resigned of his own volition because:-

  - He had an offer of two other jobs/ said that he had an offer of two other jobs.

  - He wrongly convinced himself that he was going to get £15,000 from the respondent.

- At the stage the key event occurred- by way of series of phone calls (on or about 3 September 2020) - the respondent did not want to dismiss the claimant but had wanted to retain him.

- There were good relations between the parties.

- The respondent rejects that the claimant did not know the difference between resignation and redundancy and ignorance no excuse.

- The manner the claimant's resignation letter is drafted is an indication of the claimant's capabilities.

- The claimant handed in his letter of resignation six days later and had plenty of time to think about and speak to his family to seek advice and he chose not to.

62. The claimant's key submissions were:

- It was incredulous to suggest the claimant had resigned voluntarily out of the blue and claimant's case clearly more likely.

- The claimant lives his life very simply; just wants to work hard and live quietly and gave 27 years loyal service.

- The respondent stood to benefit not the claimant.

- The suitability of the alternative position- the claimant raised his very considerable fears about doing the alternative position, one manager took the decision for the respondent and no evidence was presented upon the decision-making process.

- The claimant was asked to make a decision about his future without the key piece of information relating to his redundancy payment.

- When the decision to deny redundancy was revealed to the claimant rather than allowing the claimant to reconsider his position the respondent railroaded the claimant into writing a letter of resignation.

- The respondent took no notice of the nature of the claimant and in particular his ability to absorb information.

- The respondent provided no written communication to the claimant about the choices he was being given.

- The claimant had no explanation whatsoever of a redundancy situation and no appreciation of the difference between redundancy and resignation.

- The claimant had total faith in his employer and it did not even cross the claimant's mind that there was anything unusual regarding a request from his employer to write the letter of resignation.

- The lack of documentation ran throughout the process including in the sum of money offered to the claimant despite being aware of the claimant's low ability to absorb information. The respondent did not put anything in writing about the offer therefore the respondent was directly responsible for the confusion of the claimant.

Was the claimant dismissed by the respondent within the terms of Article 127 of the Employment Rights (Northern Ireland) Order 1996 [ERO]?

63. The tribunal find as follows:

(1) Irrespective of good relations between the parties, the respondent as reluctantly confirmed by Mr Woods in evidence did not at the time have the work to sustain the claimant in the Laundry Operative role in which he was employed and albeit the respondent wished to retain the claimant in another role, when Mr Woods communicated to the claimant that the night shift on which he worked as a Laundry Operative would no longer be running and the only role available to the claimant was one which involved a significant change in his contractual duties we consider the respondent having informed the claimant it was not going to continue to provide him the type of work which he had been employed to do and only option a different role with different duties, and that the respondent's position was settled having been made clear to the claimant from his conversations with Mr Woods in and about the start of September 2020 that this amounted to a clear anticipatory breach of contract.

(2) The breach was sufficiently important to justify the employee resigning. The duties of the proposed new role were significantly different to those carried out by the claimant for 27 years. The claimant felt dread on considering carrying out the new role proposed and that he would be unable to perform it being fearful of driving a works van throughout Northern Ireland, of getting lost, of dealing with congested city driving , carrying out multiple drops and dealing with customers. Judged objectively by reference to its impact upon the claimant the tribunal consider the respondent's notification to the claimant

of the intended discontinuance of his Laundry Operative role and that the only option a role involving driving duties was sufficiently material so as to be repudiatory and to justify his leaving.

(3) The reason *why the claimant had resigned* was in dispute. The claimant had been settled and content for 27 years in his employment as a Laundry Operative, the only job he had ever held, carrying out fundamentally the same duties without change throughout his employment. He had not applied for or secured other employment. The claimant had been told the respondent would no longer provide the work which he had been employed to do and he did not feel that he would be able to carry out the new duties of the alternative role offered. Mr Woods told the claimant he could not give him redundancy as there was an alternative role but would make him a payment in return for a resignation letter. Whilst the claimant confused the amount that had been offered by Mr Woods it is abundantly clear the principal and effective reason for the claimant providing the respondent a resignation letter ending his employment was the respondent's notified intention to no longer provide him the type of work he had carried out for 27 years and its wish to fundamentally change his duties, not the money the claimant thought he would receive or a preference for employment closer to home. The tribunal consider it unquestionable that the claimant save for the respondent's actions would have otherwise happily remained in his employment with the respondent indefinitely. The principle reason for the claimant's resignation was the respondent's expressed intention to discontinue the night shift and proposed change to his established contractual duties were his employment to continue and it is abundantly clear the claimant left in response to this anticipatory breach of his implied contractual terms and that he did not do so of his own volition, as submitted for the respondent, because he had an offer of two other jobs/ said that he had an offer of two other jobs and/ or wrongly convinced himself that he was going to get £15,000 from the respondent.

(4) The claimant provided the respondent his letter of resignation on 9 September 2020 some six days after the claimant's last conversation with Mr Woods. We do not consider the claimant delayed too long in terminating the contract so as to have lost the right to treat himself as discharged and to have elected to affirm the contract.

64. The tribunal consider the four conditions required for constructive dismissal are met and that the claimant terminated the contract under which he was employed in circumstances in which he was entitled to do so without notice by reason of the employer's conduct and was in the circumstances dismissed by the respondent within the meaning of Article 127(c) ERO.

Was the dismissal unfair within the terms of Article 130 ERO?

65. It was submitted for the respondent in the alternative (upon a finding of dismissal) the claimant's position would have come to an end because if he would not do the new role offered there was no other job for him.

66. The respondent in September 2020 as confirmed by Mr Woods did not have the work to sustain the claimant in his Laundry Operative role, had hoped he would agree to the changed role offered to him and had not considered returning the

claimant otherwise to a further period to furlough leave. The tribunal consider whilst the respondent had a potentially fair reason for dismissal by way of redundancy, fair procedures (redundancy and SDDP) had not been at that stage commenced and completed for it to have been reasonable for the respondent to have relied upon redundancy as a sufficient reason for dismissing the claimant for the dismissal to have been fair within the terms of Article 130 ERO.

What remedy is appropriate?

FINDINGS OF FACT RELEVANT TO REMEDY

67. The claimant sought compensation only by way of remedy.

68. The claimant at the effective date of termination (EDT) on 9 September 2020 was 46 years of age, had 27 complete years of service, his normal gross wage was approximately £334.13 per week (being approximately £307 net as agreed by the respondent at hearing) and he received a pension benefit of 3% gross pay.

69. The respondent was hopeful of retaining the claimant in the alternative role offered and had not yet commenced the SDDP.

70. The new role offered to the claimant was substantially different to the laundry duties carried out by him for 27 years and was not a suitable one for the claimant given his significant fears and concerns in relation to undertaking driving duties and his refusal thereof was in the circumstances reasonable.

71. In the absence of the claimant tendering his resignation letter or accepting the alternative role offered the claimant was likely otherwise to have been returned to furlough leave and/or otherwise ultimately been dismissed by the respondent by reason of redundancy such that his employment would not have terminated immediately but to have continued for some further period sufficient for completion of fair redundancy and dismissal procedures.

72. The claimant applied for Universal Credit in late September 2020.

73. Following invite on 29 September 2020 the claimant attended interview on 1 October 2020 for a Laundry Operative position, without success. Around 29 October 2020 the claimant applied for a Production Operative position which he was offered on 27 November 2020 following successful interview to start on 8 December 2020 which he accepted and remains working in.

74. The claimant would not have been paid by the respondent £1,500 save for termination of his employment.

75. In the circumstances of this case where the claimant tendered his resignation in response to an anticipatory contractual breach the tribunal consider it had not yet been practicable for the respondent to have commenced and completed the SDDP and/ or non-completion thereof before proceedings were begun was not wholly or mainly attributable to failure by the respondent to comply with a requirement therein such that an Article 17 uplift is appropriate.

Compensation

76. The tribunal finds it just and equitable to award compensation for unfair dismissal as follows:-

Basic award

5 complete years (over 41 years of age) x 1.5 x £334.13 gross = 2,505.98

15 complete years (22- 40 years of age) x 1 x £ 334.13 gross = 5,011.95

£7,517.93

Compensatory Award

Immediate Loss of Earnings

To date of new employment

Say 13 weeks @ £307 net = £3,991.00

Loss of Pension Benefit

Say 13 weeks x £334.13 gross @ 3% = £ 130.31

Loss of Statutory Rights

Say £ 500.00

Less Deductions

Ex gratia payment - £1,500.00

TOTAL **£10,639.24**

Is the claimant entitled to a payment in lieu of statutory notice/ statutory redundancy payment?

77. No award was sought by the claimant where compensation was already made under an unfair dismissal award.

What particulars ought to have been included in any written itemised payslips which the respondent failed to provide to the claimant before or at the time of payment?

78. No challenge was made to information included in payslips for payments made by the respondent to the claimant for the period June 2015 to September 2020 presented in the hearing bundle and no determination sought as to particulars that should otherwise have been included by the respondent in a written itemised pay statement at or before the time at which any payment of wages or salary was made to him under Article 40 ERO. The claimant's complaint in relation thereto is accordingly dismissed.

RECOUPMENT

79. The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996 as amended by the Social Security (Miscellaneous Amendments No 6) Regulations (Northern Ireland) 2010 and your attention is drawn to the attached notice:

    (a) Monetary award £10,639.23.

    (b) Prescribed element £3,991.00.

    (b) Period to which (b) relates: 9 September – 7 December 2020.

    (c) Excess of (a) over (b) £6,648.24.

CONCLUSION

80. The unanimous decision of the tribunal is that the claimant was dismissed by the respondent within the terms of Article 127 of the Employment Rights (Northern Ireland) Order 1996 and that the dismissal was unfair. The respondent shall pay the claimant compensation of £**10,639.23**.

81. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 9 and 10 September 2021, Belfast.

Date decision recorded in register and issued to parties: