



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Y Mahmood

**Respondent:** Keolis Amey Docklands

**Heard at:** East London East Hearing Centre (by Cloud Video Platform)

**On:** 20 – 22 April 2021

**Before:** Employment Judge Housego

**Members:** Mr M Rowe

Ms G McLaughlin

## Representation

Claimant: Abou-Bakkar Kamara, of Counsel, instructed by B N Chris, solicitors

Respondent: Paman Singh, Solicitor, Head of Litigation, Law at Work

# JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent.
2. The Claimant caused or contributed to his dismissal by 50%.
3. The Respondent is ordered to pay to the Claimant £37,005.98
4. The Recoupment Regulations apply.
5. The claims for disability discrimination and holiday pay are dismissed.

# REASONS

## Background

1. Mr Mahmood worked for the Keolis Amey Docklands (the Docklands Light Railway) for 8 years. He was away from work from 19 June 2019 until

October 2019 with stress anxiety and depression. The Respondent does not accept that this was a disability. After his return to work he recorded his leaving time which the Respondent considered he then lied about, and that this was gross misconduct. On February 2020 he was dismissed as a result. He claims that this was unfair dismissal and disability discrimination (direct, indirect, and S15 detriment arising, and failure to make reasonable adjustments). The Respondent denies this, and its case is that this is a fair capability related dismissal for a significant failure, and for falsely blaming others for the error.

### **Claims made and relevant law**

2. Mr Mahmood claims unfair dismissal and disability discrimination (direct, by reason of the dismissal, S15 (detriment from something arising from disability) and failure to make reasonable adjustments.
3. In respect of a claim for unfair dismissal, the Respondent has to show that the dismissal was for a potentially fair reason<sup>1</sup>. The Respondent says this was conduct and capability which are two of the categories that can be fair<sup>2</sup>. It has to be shown that the dismissal was fair<sup>3</sup>. The employer must follow a fair procedure throughout<sup>4</sup>, and dismissal must fall within the range of responses of a reasonable employer<sup>5</sup>. It is not for the Tribunal to substitute its own view of what should have happened, for it is judging whether the actions of the employer were fair, and not deciding what it would have done.
4. The burden of proof as to the reason for dismissal is on the employer, on the balance of probabilities. There is no burden or standard of proof for the Tribunal's assessment of whether it was fair to dismiss<sup>6</sup>. If the dismissal was procedurally unfair the Tribunal has to assess what would have happened if a fair procedure had been followed<sup>7</sup>.
5. As it is asserted that the dismissal was by reason of unlawful discrimination first the Tribunal must be satisfied that Mr Mahmood was at the time disabled. If so, in no sense whatsoever must the dismissal be tainted by such discrimination. For the discrimination claim, it is for Mr Mahmood to show reason why there might be discrimination<sup>8</sup>, and if he does so then it is for the Respondents to show that it was not.

### **Issues**

6. These are:
  - 6.1. Was the reason for dismissal misconduct?
  - 6.2. If yes, was it a fair dismissal (Burchell, Sainsbury's v Hitt and Iceland Frozen Foods v Jones)?

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<sup>1</sup> S98(2) of the Employment Rights Act 1996

<sup>2</sup> Also S98(2) of the Employment Rights Act 1996

<sup>3</sup> S98(4) of the Employment Rights Act 1996

<sup>4</sup> Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA

<sup>5</sup> Iceland Frozen Foods Ltd v Jones [1982] UKEAT 62\_82\_2907

<sup>6</sup> Section 98(4) of the Employment Rights Act 1996

<sup>7</sup> Polkey v AE Dayton Services Ltd [1987] UKHL 8

<sup>8</sup> Igen v Wong [2005] ICR 931, Madarassy v Nomura International plc [2007] EWCA Civ 33, Laing v Manchester City Council [2006] I.C.R. 159, and Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913

- 6.3. If not fair procedurally what assessment does the Tribunal make had a fair procedure been followed (Polkey)?
- 6.4. Did the Claimant cause or contribute to his dismissal by his conduct?
- 6.5. At the time, was the Claimant disabled as he claims (with stress anxiety and depression)?
- 6.6. If yes, was this a factor causing, at least in part, his dismissal?
- 6.7. If the Claimant's conduct warranted dismissal, was it so bad that summary dismissal was apt, or is the Claimant due notice pay (of 8 weeks' pay)?
- 6.8. Did the Claimant cause or contribute to his dismissal by his conduct?
- 6.9. Is the Claimant owed 11 days holiday pay in respect of shifts he says he covered for others?

### **Evidence**

7. Mr Mahmood gave evidence. Mr Bourne, who dismissed him, Mr Layton, who dismissed his appeal, both gave evidence for the Respondent. There was a bundle of documents of about 300 pages.

### **The Claimant's case**

8. Mr Mahmood says that on the first day back after 4 months sickness absence he was told that he could leave at 16:00. He had been due to work until 16:30, but was given consent to leave early. He signed out, stating that the time was 16:20. He had said that he guessed the time, but in the hearing said that there was a small clock in the room which said 16:20. He left the room, went to pray in a separate room for a while and left. He says that the investigation into his departure time was unfair. A photo was taken of the cctv which was impermissible. The actual cctv and the recordings of the radio conversations were not obtained from London Underground, and were unavailable after 14 days as they are overwritten. He doubts any request was ever made for them. He accepts that he had a warning for something similar in 2018, that was still current, and that putting the wrong exit time is a serious matter, but not that it warranted dismissal. He pointed to several others who did similar things, but either were not disciplined at all, or if they were disciplined were not dismissed. He says this was a pretext to get rid of him, because of his sickness absence, which he says amounted to a disability. He says that he was allowed to work for another 3 months, when there was no issue, which indicates that it was not as serious as the Respondent says. Mr Mahmood says that while reasonable adjustments were agreed (a phased return to work) they were not acted upon. He said in the hearing that he is due pay for shifts covered for others.

### **The Respondent's case**

9. The Respondent does not accept that Mr Mahmood is disabled as claimed. They say that his medical records refer only to low mood and to stress, but

not to anxiety and depression. Also, they say that it was never going to be of 12 months duration, and so is not a disability as defined in the Equality Act 2010. They say that Mr Mahmood was deceptive in his recording of his time out. They say this is regarded as very serious as it is essential to know who is on site, either as they may be needed if there is an incident, or if there is a fire the sign in book is an evacuation log. They say this was gross misconduct, and that the dismissal was proportionate, and the conduct was exacerbated by lying about it, which was charged in addition to the time out issue.

10. Further details of both parties' cases are to be found in the facts found section of this judgment.

### **Submissions**

11. Mr Singh, for the Respondent, and Mr Kamara, for the Claimant, both provided very helpful and full written submissions, which a higher Court can read if required. The Tribunal adjourned for 1 ½ hours to read them, and then both advocates made brief oral submissions about points in the other's submissions. My typed record of proceedings records them

### **Facts found**

12. Mr Mahmood had worked for the Respondent for 8 years. People tend to stick, and this was not unusual. All roles are safety critical roles, and Mr Mahmood was a customer services person at the Docklands Light Railway station at Bank, which is part of the London Underground station there.
13. Mr Mahmood was off from work from 19 June 2019, though stress. These judgments are available on line, and the causes of that stress are not germane to the issues we have to decide. They were not work related. The sick notes said "*stress*" and the GP notes refer to "*low mood*". There is not reference to anxiety and depression, although a psychologist's report obtained by Mr Mahmood indicated that in December 2020 he so suffered. He is now much improved. His health markedly worsened when he was dismissed, perhaps unsurprisingly, but then recovered.
14. He returned to work on 19 October 2019, his doctor recommending a phased return (with shorter working days) and additional cognitive behavioural therapy sessions. He had some sessions before his return, and the Respondent has an employee welfare programme which can fund treatment privately: the human resources department agreed to this, but his manager, Mr Dawson, did not tell him of this so he never received that help.
15. Mr Dawson also did not tell Mr Mahmood's supervisors of his reduced hours.
16. Mr Mahmood had no previous history of mental health issues.
17. The effect of Mr Mahmood's illness when he was working for the Respondent was certainly of the severity needed to be more than "minor or trivial", even though the GP did not refer to anxiety or depression. He could not work for 4 months, so plainly it affected his ability to carry out day to day activities (the job not being particularly onerous). However, he was expected

to make a full recovery, and had done so by the time he returned to work. He was not on medication. His condition had lasted 4 months or so. It does not meet the requirement that it must last, or be expected to last, 12 months. (It does not meet the “*could well happen*” or “*likely*” test). The later relapse caused largely by being dismissed is not relevant as it necessarily postdates the employment.

18. Therefore, Mr Mahmood has not shown that he is disabled as claimed and so his claims for disability discrimination must be dismissed.
19. For completeness, had Mr Mahmood been within the definition of disability the claim relating to dismissal would not have succeeded on its merits. The manager was plainly deficient in the way he approached a variety of matters (in failing to tell Mr Mahmood of the CBT, and not letting his supervisors know of his reduced hours, and in his failure to get proper evidence of the cctv and radio calls). Mr Mahmood also found him not particularly sympathetic (his GP's notes record that Mr Mahmood complained to him that his manager was primarily concerned with the difficulties it caused him that Mr Mahmood was absent and about the cost to the Respondent of the sick pay). However, there is no reason to think that Mr Bourne or Mr Layton were motivated in any way by Mr Mahmood's sickness absence, which was atypical and seemed likely to have been resolved by the time he was dismissed.
20. Mr Mahmood was supernumerary when he returned. He had to do some refresher training and familiarisation with his station. This is all entirely sensible: if something occurs that is an emergency staff have to know exactly what to do immediately. He returned on 21 October 2019, on a shift from 08:00 to 15:00. He was to work noon to 17:00 22<sup>nd</sup> – 24<sup>th</sup> October 2019, inclusive. Mr Mahmood was not happy that he got only a 20 minute break instead of 40 minutes. The Respondent's witnesses did not know about this, but thought it likely that the training would have involved breaks as well, as this was the norm. He went home agreeing to come in ½ hour early (at 11:30) the next day, which he did. He was rostered on a standard shift from 07:00 to 13:50. On 22<sup>nd</sup> he was to work from noon to 17:00, but this was changed to 16:30 as he had started ½ hour early.
21. Mr Mahmood started his Competent Management System training which should have taken about 1½ - 2 hours, but after about ½ hour he was asked to cover other colleagues who were due lunch breaks.
22. Mr Mahmood says that he had radio contact with Ms Shah and with Mr Hales, both supervisors, who told him at about 16:00 that he could go home. He signed out, putting 16:20 as the time he had signed out.
23. At about 14:00 on 23<sup>rd</sup> Mr Dawson came to site. He asked Mr Mahmood when he had left the previous day. Mr Mahmood said 16:20-16:30. Mr Dawson left but returned at 16:00 and viewed the cctv, which is run by London Underground Ltd (“LUL”), and saw the back of someone in the room where the signing out form is kept, at 16:00. He took a photo of the stopped cctv, on his mobile phone. This does not accord with procedure. He should have made a request for the cctv footage to be retained. He did not do so, and it was overwritten (as is always the case) about 2 weeks later. He

looked at the form, which showed a leaving time of 16:20. At the time Mr Dawson thought Mr Mahmood was to work until 17:00, whereas it was in fact 16:30.

24. Mr Mahmood said that he went to pray for a while before leaving the workplace. The rationale is that the register records everyone at work: once signed out and leaving the DLR part of the station (the analogy being “*airside*” in an airport) the person becomes a member of the public. Mr Mahmood should have signed out after praying, not before, but the error is not significant, or would become so only if he prayed for longer or shorter than he anticipated and so did not leave “*airside*” when he predicted. There was an allegation that he spent too long praying, but this was not pursued.
25. Mr Dawson sent in a report asking that this be investigated. He said that at 15:53 Mr Mahmood could be seen on the cctv speaking to Mr Hale. On 24 October 2019 Karl Winstanley, Head of Stations, asked Umar Ali to investigate.
26. On 07 November 2019 Mr Ali asked to interview Mr Mahmood, and did so on 13 November 2019. Mr Mahmood said that at 16:00 Ms Shah said he could go and he signed out at 16:20. He said that he left the concourse at 16:00, signed out, prayed and left. Asked why it was different to the time he actually left, he said he could be mistaken, but he prayed and left (after signing out). He said he was sure it was 16:20, but if not it was a mistake and his fault. He knew he had a live warning (expiring within days) for not signing out at all and would not intentionally do that as it would be stupid to do so. Ms Shah had agreed that as he finished at 16:30 he could stop at 16:00, pray and leave. He was not, he said, skiving or running off. He admitted it was an error. Ms Shah had told him that he could leave at 16:00.
27. Zara Shah emailed Mr Ali on 01 November 2019. She wrote that Mr Mahmood had told her he was due to finish at 16:00 on 22 October 2019.
28. James Hale said in an email of 05 November 2019 that he had been told on 22 October 2019 by Mr Mahmood that his shift was noon – 16:00.
29. Mr Ali completed his report on 26 November 2019. No request was made by anyone for cctv or radio recordings.
30. On 23 January 2020 Mark Bourne wrote to Mr Mahmood calling him to a hearing on 30 January 2020. The delay was due to holidays, it appears. The meeting was postponed and took place on 05 February 2020.
31. In Mr Bourne’s witness statement he states that he always had a good relationship with Mr Mahmood and had never had any problem in dealing with him, and like him, but said that he had a reputation for being “shady”. The Tribunal found this an extraordinary thing to say, for Mr Bourne agreed that there was no relevance to the matters in issue, that it was not his opinion, but that unnamed others had this view without giving any reason why. It can only be an ill advised attempt to persuade the Tribunal to doubt Mr Mahmood’s credibility. The effect is, instead, to cast doubt on the bona fides of Mr Bourne’s decision making.

32. Mr Bourne decided that Mr Mahmood was not truthful, had left at 16:00, writing 16:20 in the register. He decided to dismiss Mr Mahmood.
33. Mr Bourne says that he took account of the fact that Mr Mahmood had worked for 8 years for the Respondent and 11 years on the DLR. He says that he noted that Mr Mahmood had not been suspended and had worked from then to 05 February 2020 (3½ months) with no further issue arising. In answer to a question put in cross examination, Mr Bourne considered this supported his conclusion that Mr Mahmood was lying not mistaken, for he would have expected more mistakes if the 22<sup>nd</sup> October 2019 was a mistake. The Tribunal found this remarkable: as he made no mistake he was a liar and fell to be dismissed, and if he had made more mistakes he would be liable for dismissal for a 3<sup>rd</sup> such matter. Mr Bourne saw no reason why Ms Shah and Mr Hale would make up their account that Mr Mahmood had told them he was to finish at 4pm.
34. Mr Layton took the appeal. His evidence was more impressive than that of Mr Bourne, and clearly he had applied his mind forensically to the issues. He permitted Mr Mahmood to change the entire basis of his appeal. As submitted, it was an apology and a plea for clemency. At the hearing it was a denial of wrongdoing, and an allegation that Ms Shaha and Mr Hale were colluding in untruthful evidence that he had told them he was due to end at 16:00. He said that his previous RMT rep had prepared the appeal and he had not read it before submitting it.
35. Mr Mahmood points out that 16:20 is an odd time to write if it was not thought to be correct at the time he wrote it, for he was to work to 16:30. If intentional he might be more likely to write 16:30.
36. Mr Mahmood's account has varied over time, and in the hearing, for the first time he claimed that there was a stand alone clock in the room where the register was. On the balance of probabilities Mr Mahmood told Ms Shah and Mr Hale that his shift ended at 16:00, he was released by Ms Shah towards 16:00 and went and signed out at that time, putting in the time of 16:20. It is most likely that the reason for doing so was, in effect, to reclaim the 20 minute break he felt he had been deprived of the previous day.

## **Conclusions**

37. As set out above. the Tribunal decided that Mr Mahmood has not shown that he was disabled within the meaning of the Equality Act 2010 during his employment with the respondent.
38. The effect upon him of his illness met the definition in the Act, whatever label the GP gave to it. It prevented him working for four months at an occupation which is not outside the description of day-to-day activities. However, it was not expected to last for more than 12 months and in fact did not do so. Accordingly, it does not meet the definition in the Act, and therefore the claims for disability discrimination must be dismissed.
39. It is not disputed that the dismissal was for the reason of misconduct which is potentially fair.

40. The Tribunal decided that Mr Bourne and (particularly) Mr Layton had genuine belief in misconduct on reasonable grounds after proper investigation of that misconduct. In coming to that conclusion the Tribunal took full note of the criticisms of the evidence relied upon by the Respondent. These were principally the absence of CCTV, the use of still photographs taken of the CCTV which did not seem to comply with London Underground procedures, and the absence of radio communication between Mr Mahmood and Mr Shah and Mr Hale. That the photographs and timings of the photos of the cctv were accurate was not disputed. The points were that they should not have been admissible, and that nothing was done about Mr Dawson's various failures in relation to Mr Mahmood, but he was dismissed for a 20 minute error in signing out times.
41. It was not satisfactory that it took from 23<sup>rd</sup> October 2019 until 05<sup>th</sup> February 2020 to deal with this matter. Nevertheless, the Tribunal considered that the procedure was fair. Mr Ali was a proper person to investigate and did so competently. Mr Bourne and Mr Layton were appropriate people to deal with the disciplinary hearing and appeal. The delay did not impact on the outcome.
42. The Tribunal gave deference to the Respondent's view that these matters are of importance. It noted that Mr Mahmoud considered the allegation, if proved, serious.
43. It noted, however, that Mr Mehmood had eight years' service. He had one warning for not signing out almost a year before but otherwise has an unblemished record (at least the Tribunal was not told of anything before that, and Mr Layton did not know of anything).
44. The Tribunal noted that the matter was not considered serious enough to suspend Mr Mahmood, even after the investigation report was concluded.
45. The Tribunal did not consider the health and safety concern of the Respondent had any great weight. It is simply unrealistic to consider that there was a risk to the Fire Brigade if an incident arose such that they were called to site, and inspected the paper register in the office then to seek out the absent Mr Mahmood, all between 16:00 and 16:20, for some of which time he was on site praying. When Mr Dawson was on site he did not always log in and out, and we were told that he might sometimes do so on a LUL log in. If this was a serious fire or incident evacuation log it would be on line so as to be accessible remotely, and not depend on someone locating a paper record in what might be a smoke filled room. That is not to detract from the fact that it is important that people login and logout at the correct times, and that this Respondent considers this very important, and the staff know that.
46. The health and safety aspect is also undermined by the fact that someone else on the same timesheet had not signed out at all, and others had put the wrong time. This was pointed out to Mr Layton who caused it to be investigated. Apparently, it was staff who were delayed because the staff train was late and recording the time they should have arrived rather than the time they actually arrived, and new staff who simply forgot, and who were given advice. The point is, of course, that Mr Dawson investigated Mr



Mahmood for a 20 minute divergence, but not someone not signing out at all. Mr Dawson also failed to tell Mr Mahmood that his further CBT sessions had been approved, and failed to tell Mr Mahmood's supervisors of his reduced shifts. The Tribunal accepted Mr Mahmood's evidence that Mr Dawson was not happy about the extended absence of Mr Mahmood. That was what Mr Mahmood had told his GP at the time, and the GP had made a note of that, those notes being provided to us. Mr Dawson was not well disposed towards Mr Mahmood.

47. For Mr Layton it was more important that Mr Mahmood had been untruthful in his explanation. He did not accept that Mr Mahmood did not have access to a clock. He saw no reason to doubt the evidence of Ms Shah and Mr Hale, set out in emails to Mr Ali. Nor does the Tribunal, particularly given Mr Mahmood's oral evidence when, for the first time, he said that there was a small freestanding clock in the room with the timesheet which he relied upon. First, he had never said that before, and secondly no one else's time seem to be affected. This was a new embellishment of his account.
48. The essence of the Respondent's rationale is that they felt they could not trust Mr Ali as a lone worker on DLR stations. The thrust of that is greatly undermined because that is precisely what they did between 23 October 2019 and 05 February 2020. Even if it was not considered as gross misconduct before, presumably it was by the time the investigation report was submitted, on 26 November 2019, although the investigation report does not expressly so state.
49. During that 15 week period there was no issue with Mr Mahmood's work or timekeeping or record-keeping. The Respondent did not say whether or not they checked. Either they checked and all was well, or they did not check because they were not concerned. While it may be that Mr Mahmood would have been punctilious until the matter was resolved, the fact is that he was still trusted until dismissed.
50. It is trite law that the Tribunal must not substitute its own view for that of the employer. The tribunal does not make its own decision about what it would have done, but judges whether the actions of the employer for within the range of responses of the reasonable employer. Nevertheless, the range of responses of the employer is not infinitely wide but is subject to S98(4): Newbound v Thames Water Utilities [2015] EWCA Civ 677, paragraph 61. Nor is it fair to dismiss automatically by reason of gross misconduct: Department for Work and Pensions v Mughal (Unfair Dismissal: Reasonableness of dismissal) [2016] UKEAT 0343\_15\_1406. The Tribunal found that Mr Bourne did not give enough attention to the possibility of a lesser sanction, even if it had been gross misconduct.
51. Given the length of service, the three months work after the event, and the relatively small time involved, the tribunal does not consider that denying the allegation untruthfully elevates this misconduct to a dismissible offence. It follows that it was not gross misconduct.
52. For the reasons given above the Tribunal does not consider that the dismissal of Mr Mahmood fell within the Iceland Frozen Foods v Jones test and so the dismissal was unfair.

53. This is not a procedural point and so *Polkey* does not arise (and nor does uplift).
54. Mr Mahmood’s conduct plainly caused or contributed to his dismissal. The Tribunal found that he did know what he was doing, and he was not entirely straightforward in his explanation. The Tribunal assessed this contribution at 50%.
55. Mr Mahmood seeks reinstatement or re-engagement. The DLR has some 500 staff, which is large, but not very large. Mr Mahmood’s defence cast aspersions at both supervisors and senior managers. The Tribunal does not think it practical to make an order for reinstatement or re-engagement, which might have been unjustified anyway by reason of the substantial contribution.
56. The tribunal moved on to consider its financial award. We have considered the guidance in Software 2000 Ltd v. Andrews & Ors [2007] UKEAT 0533\_06\_2601 about remedy. Mr Mahmood relapsed following his dismissal, unsurprisingly, and was unable to work for some time. The Tribunal considers that the notice period deals with this. He has made a series of job applications, mainly connected with the railway industry, but in other completely different fields as well. The Tribunal found that he had met the obligation to try to mitigate his loss.
57. These are unusual times. Even outside lock down times traffic on the railways is very diminished. Other customer services roles are severely affected by lack of customers. Many businesses still have employees on furlough, and so will not be recruiting. It is not realistic to have expected Mr Mahmood to have secured employment (particularly with a gross misconduct dismissal) before some sort of normality is set to return on 21 June 2021. Then it will take him some time to find employment. We assess the period to find a similar role to expire on 01 October 2021. The Tribunal has prepared a schedule of loss to be awarded, using employmentclaimstoolkit provided by Bath publishing.
58. Mr Mahmood claimed holiday pay. He was paid that in his final salary payment. In answer to questions put in cross examination Mr Mahmood said, for the first time, that this was for extra shifts worked to cover others. That would require amendment, which was not sought, and so that claim is dismissed.

**Calculation of award**

<p><b>IN THE EMPLOYMENT TRIBUNALS</b>  <b>CASE NO: 3201297/2020 BETWEEN</b>  <b>Y Mahmood v Keolis Amey Docklands</b>  <b>Ltd</b></p>	
<p><b>1. Details</b></p>	
Date of birth of claimant	13/06/1981
Date started employment	24/10/2011

Effective Date of Termination	05/02/2020
Period of continuous service (years)	8
Age at Effective Date of Termination	38
Date new equivalent job started or expected to start	01/10/2021
Remedy hearing date	22/04/2021
Date by which employer should no longer be liable	01/10/2021
Contractual notice period (weeks)	8
Statutory notice period (weeks)	8
Net weekly pay at EDT	668.21
Gross weekly pay at EDT	723.90
Gross annual pay at EDT	37,642.80
<b>2. Basic award</b>	
Basic award Number of qualifying weeks (8) x Gross weekly pay (525.00)	4,200.00
Less amount for unreasonable refusal to be reinstated	0.00
Less contributory fault (basic award) @ 50%	-2,100.00
Less redundancy pay already awarded	0.00
<b>Total basic award</b>	<b>2,100.00</b>
<b>3. Damages for wrongful dismissal</b>	
Loss of earnings Damages period (8) x Net weekly pay (668.21)	5,345.68
Plus failure by employer to follow statutory procedures @ 0%	.00
Less failure by employee to follow statutory procedures @ 0%	0.00
Less accelerated payment (wrongful) @ 0%	0.00
Plus interest (damages) @ 0%	0.00
<b>Total damages</b>	<b>5,345.68</b>
<b>4. Compensatory award (immediate loss)</b>	
Loss of net earnings Number of weeks (55.1) x Net weekly pay (668.21)	36,818.37
Plus loss of statutory rights	500.00
Less payment in lieu	0.00
Less ex-gratia payment	0.00
Less non-recoupable benefits	0.00
Less early payment of compensation	0.00
Plus loss of pension	761.80
Pension loss	0.00

Class 1 NIC contributions (52 weeks)	761.80
<b>Total compensation (immediate loss)</b>	<b>38,080.17</b>
<b>5. Compensatory award (future loss)</b>	
Loss of future earnings Number of weeks (23.1) x Net Weekly pay (668.21)	15,435.65
<b>Total compensation (future loss)</b>	<b>15,435.65</b>
<b>6. Adjustments to total compensatory award</b>	
Less Polkey deduction @ 0%	0.00
Plus failure by employer to follow statutory procedures @ 0%	0.00
Less failure by employee to follow statutory procedures @ 0%	0.00
Less deduction for making a protected disclosure in bad faith @ 0%	0.00
Less contributory fault (compensation award) @ 50%	-26,757.91
Accelerated payment @ 0%	0.00
<b>Compensatory award before adjustments</b>	<b>53,515.82</b>
<b>Total adjustments to the compensatory award</b>	<b>-26,757.91</b>
<b>Compensatory award after adjustments</b>	<b>26,757.91</b>
<b>7. Summary totals</b>	
Basic award	2,100.00
Wrongful dismissal	5,345.68
Compensation award including statutory rights	26,757.91
<b>Total</b>	<b>34,203.59</b>
<b>8. Grossing up</b>	
Tax free allowance (Â£30,000 - any redundancy pay)	30,000.00
Basic + additional awards	2,100.00
Balance of tax free allowance	27,900.00
Compensatory award + wrongful dismissal	32,103.59
Figure to be grossed up	4,203.59
<b>GROSSED UP TOTAL</b>	<b>37,005.98</b>

AFTER COMPENSATION CAP OF £37,642.80 (GROSS ANNUAL PAY)	37,005.98
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**IN THE EMPLOYMENT TRIBUNALS CASE NO: 3201297/2020  
BETWEEN  
MAHMOOD  
AND  
KEOLIS AMEY DOCKLANDS  
RECOUPMENT**

**Recoupment**

Prescribed period 02/04/2020 to 22/04/2021

**Compensation cap applied**

Total award	£37,005.98
Prescribed element	£18,409.19
Balance	£18,596.80

**Compensation cap not applied**

Total award	£37,005.98
Prescribed element	£18,409.19
Balance	£18,596.80

**Employment Judge Housego  
Date 23 April 2021**