THE INDUSTRIAL TRIBUNALS

CASE REF: 149/13

CLAIMANT: **Krzysztof Podlejski**

RESPONDENT: **Camden Group Limited**

DECISION

The unanimous decision of the tribunal is that the claimant was unfairly dismissed by the respondent. The respondent is hereby ordered to reinstate the claimant by **19 August 2013**. The respondent is also ordered to pay the claimant arrears of pay amounting to £12,040.00 (net). The full terms of the order for reinstatement are set out at paras 64 to 67 of this decision.

Constitution of Tribunal:

Chairman: **Ms J Turkington**

Members: **Mr B Heaney**
Mr S Kearney

Appearances:

The claimant appeared and represented himself with the assistance of an interpreter.

The respondent appeared and was represented by Mr Vincent Miskelly, Barrister-at-law, instructed by D A Martin Solicitors.

THE CLAIM

1. The claim was a claim of unfair dismissal.

THE ISSUES

2. The issues to be determined by the tribunal were as follows:-

   (a) Whilst this issue was not raised directly by either of the parties, the tribunal had to consider whether the statutory dismissal procedure had been completed. If not, whether the respondent was responsible for such

non-completion and whether the dismissal of the claimant was thereby rendered automatically unfair.

(b) The parties confirmed to the tribunal at the outset of the hearing that the issue between them was essentially whether dismissal fell outside the range of reasonable responses of a reasonable employer.

(c) In the event that it found the dismissal of the claimant to be unfair, the tribunal had to determine the appropriate remedy. The claimant sought reinstatement.

SOURCES OF EVIDENCE

3. The tribunal heard oral evidence from the claimant and from Alan Barron and Richard Boone on behalf of the respondent. In the course of the hearing, the parties also referred the tribunal to a number of documents in the tribunal bundle.

CONTENTIONS OF THE PARTIES

4. The respondent's representative contended that the claimant had been fairly dismissed by reason of conduct, namely the claimant's failure to follow the correct procedure in relation to his absence from work on 27 June 2012. It was submitted that the respondent had carried out a thorough investigation and that the respondent had behaved reasonably throughout the procedure. Further, the respondent's counsel contended that the dismissal of the claimant fell within the range of reasonable responses of a reasonable employer.

5. However, in the event that the tribunal determined that the claimant had been unfairly dismissed, the respondent's counsel confirmed that the respondent would have no difficulty in reinstating the claimant.

6. The claimant essentially contended that he had produced all the documentation that the respondent had required from him in the course of the investigation and that his dismissal was harsh and unreasonable in all the circumstances.

FACTS OF THE CASE

Having considered the claim form and response, and having heard the oral evidence of all the witnesses and considered the documents referred to in evidence, and the submissions made by or on behalf of both parties, the tribunal found the following relevant facts:-

7. The claimant who was born on 31 July 1983 was employed by the respondent from 13 March 2007 to 25 October 2012. The respondent has more than 300 employees in total. The claimant was employed in the respondent's factory in Benburb, County Tyrone as a Production Operator. At the date of termination of his employment, the claimant earned £350 per week gross, £280 per week net. The claimant was not a member of the respondent's pension scheme.

8. The respondent produces double-glazed window units and has factories in both Antrim and Benburb. The claimant worked in a team of 4 to 6 operatives. His immediate supervisor was Victor Wallace and the Production Manager in Benburb was Richard Boone. Mr Boone was responsible for approximately 70 staff, including approving absences for holidays or otherwise for these staff. The claimant worked on night shift. The union liaison person for the night shift was Robert Wargacki who often acted as interpreter for the Polish employees working on that shift.

9. The claimant received a Statement of Main Terms and Conditions of Employment around August 2008. This Statement referred to annual holiday and stated that all annual holidays must have prior approval and authorisation. Requests for holidays were to be submitted to "your immediate supervisor" and the company would respond as soon as possible to your request for holiday. The respondent also had a Company Handbook. This Handbook set out the company's Rules and Disciplinary Procedures. These Rules contained a number of examples of gross misconduct. In his evidence to the tribunal, Mr Barron, the respondent's HR Manager, accepted that the conduct of which the claimant was accused was not included in this list. The Handbook indicated that this list was not exhaustive.

10. On the afternoon of 27 June 2012, the claimant's partner received a telephone call informing her that her father in Poland was very ill and was being discharged from hospital. The claimant decided that he would have to travel to Poland with his family. The claimant contacted Robert Wargacki that afternoon and he in turn contacted Victor Wallace. Mr Wallace said that he would try to speak to Mr Boone if he phoned. Later that night, after the claimant had started his night shift which began at 10.00 pm, the claimant and Mr Wargacki approached Mr Wallace about time off to visit Poland for the family emergency. Mr Wallace said that he was not able to give this permission and the claimant would have to speak to Mr Boone. It was generally understood that Mr Boone was available to take phone calls to his home or mobile phone until approximately 11.00 pm at night.

11. The claimant did not speak to Mr Boone. Mr Wargacki tried to phone the respondent's HR office in Antrim. There was no answer, but he left a message about the claimant's absence and confirmed that he had done this by a phone call to the claimant and the claimant received this call while he was in the airport. The claimant and his family flew out to Poland at 9.00 am the next morning.

12. The claimant was absent from work for 4 night shifts. He returned to work on the night of 4 July having flown back to Dublin on the night of 3 July. Some production at the factory was lost during the first night of the claimant's absence, but after this the respondent was able to organise cover.

13. Upon his return to work, Mr Wallace conducted a return to work interview with the claimant. Mr Wallace recorded in his note of the interview that the claimant had been told he required the permission of Mr Boone. The claimant was asked for proof of his flights and booking tickets. Mr Wallace indicated that a disciplinary interview should be arranged.

14. Mr Boone conducted a meeting with the claimant on 19 July 2012. The notes of this meeting are headed "Disciplinary Hearing" and "reason – time and attend". The claimant was asked about the reasons for a few periods of absence including that

from 28 June to 3 July 2012. The claimant was asked again for details of the flights and booking.

15. Mr Barron met with Mr Boone on 3 September 2012 to discuss the claimant's case.

16. On 6 September, Mr Wargacki was invited to an investigatory meeting on 12 September to discuss the suggestion that he had given the claimant permission to go on leave.

17. Also on 6 September, the claimant was invited to a reconvened disciplinary meeting on 12 September regarding absence and timekeeping. The claimant was warned that this meeting could lead to dismissal from the respondent's employment. The matters referred to in this letter included alleged unauthorised absence from 28 June to 6 July 2012. This meeting did not proceed.

18. An investigatory interview with Mr Wargacki took place on 19 September 2012. This was conducted by Mr Boone. Mr Wargacki said that he had made it clear that the claimant needed to contact Mr Boone to get permission for his absence. Mr Boone conducted a further investigatory interview with Mr Wallace on the same date. Mr Wallace also confirmed that he had told the claimant that he needed to contact Mr Boone. There was also an investigatory interview with the claimant on the same night. By this stage, the claimant had furnished to Mr Boone a copy of the internet booking page for the flights to Poland and return. The respondent was in addition seeking details of the booking for the claimant's partner and his child who flew with him.

19. On 2 October, Mr Barron wrote to the claimant again seeking further details and documents essentially to prove when the flights were booked and paid for and that the claimant's family flew with him.

20. The claimant provided further information and documents to the respondent.

21. On 22 October 2012, notification was given to all employees at the Benburb factory that, in light of reduced orders and in order to cut costs, the company was proposing that the length of shifts would be reduced for all staff from 8 hours to 7 hours from 29 October 2012 for 14 weeks. In the event, reduced hours working was only required for a much shorter period.

22. A letter dated 23 October 2012 was sent to the claimant inviting him to attend a disciplinary hearing the following night 24 October at midnight. This letter was handed to the claimant during the night shift on 23 October. The claimant was informed that the hearing was regarding a "deliberate intention to take time off on 29 July 2012". The given date was an error and this should have referred to 28 June. The claimant was reminded that "this is a gross misconduct offence, therefore the outcome of this hearing could lead to summary dismissal from your employment". The claimant was also reminded that he was entitled to be accompanied by a work colleague or an accredited Trade Union representative at the hearing.

23. The claimant attended the hearing accompanied by a colleague Tomasz, who was effectively selected by the respondent to assist the claimant. Mr Wargacki was not at work this particular week. The hearing was conducted by Mr Boone who had

also conducted the investigation. Mr Wallace was also present. A short note made by Mr Boone of this hearing was included in the tribunal's papers and this suggested that Mr Wallace attended the hearing in the capacity of note taker. However, any notes taken by Mr Wallace were never produced to the tribunal. Mr Wallace did not give evidence to the tribunal.

24. During this hearing, Mr Boone announced his decision that the claimant should be immediately dismissed.

25. There was some dispute between the parties about the length and nature of this hearing. The claimant's evidence was that this was a very short hearing lasting approximately 10 minutes where the claimant was given little or no opportunity to state his case. Mr Boone said that the claimant was given a chance to add any evidence and maintained that the decision was his alone and that he had not taken his decision before the hearing.

26. The notes of the hearing taken by Mr Boone are entirely consistent with the claimant's version of events, although the tribunal does accept that it is difficult for the person conducting the meeting to take a verbatim note. Nevertheless, the thrust of the note made by Mr Boone is more consistent with a situation where the hearing effectively consisted of Mr Boone explaining and announcing a decision rather than the claimant being given an opportunity to put forward his case and have this considered before a decision was made. Certainly the claimant was not given any opportunity to put forward any mitigating circumstances relevant to question of penalty and there was no adjournment for consideration before Mr Boone announced his decision.

27. On balance, the tribunal found the claimant's evidence on the nature and duration of the disciplinary hearing to be both convincing and credible. The tribunal therefore accepted that this hearing was very short and that the decision to dismiss the claimant was effectively taken before the hearing so that the objective of the hearing was simply to explain and announce that decision.

28. Following the disciplinary hearing, the claimant removed his belongings and left the respondent's premises.

29. The outcome of the disciplinary hearing was confirmed by letter dated 25 October 2012. In this letter, Mr Boone gave the reason for dismissal as "due to your deliberate intention to take time off". The claimant was informed of his right of appeal by writing to the respondent's HR manager within 5 working days.

30. The claimant appealed the dismissal decision by letter dated 30 October. In this letter, the claimant said that he understood the main reason for his dismissal was that he had not spoken to his manager Mr Boone. He contended that he had tried everything to contact Mr Boone and had also provided all the evidence which had been required from him. He requested an oral hearing with the Union representative present.

31. An appeal hearing was scheduled for 9 November 2012. This hearing did not proceed as the Production Manager who was to conduct the hearing was not available. A further hearing arranged for 15 November also did not proceed

because the manager who was to conduct that hearing was also not available for operational reasons.

32. A letter dated 28 November was sent to the respondent by solicitors acting on behalf of the claimant. In this letter, the solicitors suggested that the respondent had already made up its mind in relation to the appeal and that the claimant would be lodging tribunal proceedings unless the appeal was heard within 7 days.

33. The respondent made a further attempt to arrange an appeal hearing on 7 December 2012. This date was rearranged at the request of the claimant. On 9 January, the respondent wrote to the claimant to confirm that yet another appeal hearing was arranged for 18 January 2013. The claimant responded by letter dated 14 January saying that it was far too late for this and he would not be attending. The claimant also confirmed that he had already lodged his claim with the tribunal.

34. The claimant's claim was lodged with the tribunal on 15 January 2013.

STATEMENT OF LAW

35. The statutory dismissal procedure introduced by the Employment Rights (Northern Ireland) Order ("the 2003 Order") applies in this case. In basic terms, the statutory procedure set out in Schedule 1 of the 2003 Order requires the following steps:-

Step 1 – written statement of grounds for action and invitation to meeting – the employer must set out in writing the grounds which lead the employer to contemplate dismissing the employee.

Step 2 – meeting – the meeting must take place before action is taken. The meeting must not take place unless –

(a) the employer has informed the employee what the basis was for including in the statement the grounds given in it, and

(b) the employee has had a reasonable opportunity to consider his response to that information.

The timing and location of meetings must be reasonable.

After the meeting, the employer must inform the employee of his decision and notify him of the right to appeal against the decision.

Step 3 - appeal – if the employee informs the employer of his wish to appeal, the employer must invite him to attend a further meeting. After the appeal meeting, the employer must inform the employee of his final decision. The employee must be afforded the right to be accompanied at any meetings under the statutory dismissal procedure.

36. By Article 130A (1) of the Employment Rights (Northern Ireland) Order 1996 ("the Order"), where the statutory dismissal procedure is applicable in any case and the

employer is responsible for non-completion of that procedure, the dismissal is automatically unfair.

37. A tribunal is required to consider whether the dismissal is automatically unfair under article 130A even where this issue has not been specifically raised by the claimant – see ***Venniri v Autodex Ltd (EAT 0436/07)***. Further, by Article 17 of the 2003 Order, where the tribunal is satisfied that the non-completion of an applicable statutory procedure is wholly or mainly attributable to failure by the employer, it shall 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 up to an increase of 50%.

38. Leaving to one side the question of potentially automatically unfair dismissal as referred to above, pursuant to Article 130(1) of the Order, it is for the employer to show the reason for the dismissal. Further, the employer must show that the reason shown by it is a reason falling within para (2). A reason falls within para (2) if it relates to the conduct of the employee.

39. Article 130(4) of the Order states as follows:-

> *"where the employer has fulfilled the requirements of para (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case".*

40. The leading cases in relation to conduct dismissals are summarised in the judgement of the Northern Ireland Court of Appeal in the case of ***Patrick Joseph Rogan v South Eastern Health and Social Care Trust [2009] NICA 47***. In his judgment in that case, the Lord Chief Justice refers to the case of ***Iceland Frozen Foods Ltd v Jones 1983 ICR 17*** where Browne-Wilkinson J said as follows:-

> *"(1) the starting point should always be the words of [article 130(4)] themselves;*
>
> *(2) in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the industrial tribunal) consider the dismissal to be fair;*
>
> *(3) in judging the reasonableness of the employer's conduct an industrial tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;*
>
> *(4) in many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one*

employer might reasonably take one view, another quite reasonably take another;

(5) the function of the industrial tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

41. The Court in the ***Rogan*** case also quoted with approval the following passage from the case of ***British Home Stores v Burchell 1980 ICR 303***:-

"What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the tribunal would themselves have shared that view in those circumstances. It is not relevant, as we think, for the tribunal to examine the quality of the material which the employer had before them, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only upon the basis of being "sure," as it is now said more normally in a criminal context, or, to use the more old-fashioned term, such as to put the matter "beyond reasonable doubt." The test, and the test all the way through, is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstance be a reasonable conclusion."

42. In the ***Rogan*** case, the Court described the task of the tribunal as follows:-

"*It is for the employer to establish the belief in the particular misconduct. The tribunal must then consider whether the employer had reasonable grounds upon which to sustain the belief and thirdly whether the employer had carried out as much investigation into the matter as was reasonable in all circumstances. The tribunal must also,*

of course, consider whether the misconduct in question was a sufficient reason for dismissing the employee."

43. Pursuant to Article 146 of the Order, a tribunal which finds a complaint of unfair dismissal to be well-founded may, where the claimant expresses a wish for the tribunal to make such an order, make an order under Article 147 for the reinstatement of the claimant (in accordance with Article 148) or the re-engagement of the claimant (in accordance with Article 149).

44. Article 150 of the Order states that, in exercising its discretion as to whether or not to order reinstatement to the claimant's former job in any case, the tribunal shall take into account the following:-

    a. whether the claimant wishes to be reinstated;

    b. whether it is practicable for the employer to comply with an order for reinstatement, and

    c. where the claimant has caused or contributed to the dismissal, whether it would be just to order his reinstatement.

45. If the tribunal decides not to make an order for reinstatement, it is required by Article 150(2) to consider whether to make an order for re-engagement to employment which is comparable or otherwise suitable for the claimant and, if so, on what terms. In so doing the tribunal shall take account of the factors outlined at in the previous paragraph.

46. If the tribunal determines that it is not appropriate to order either reinstatement or re-engagement, it shall consider an award of compensation. By Article 152 of the Order, where a tribunal makes an award of compensation for unfair dismissal, the award shall consist of a basic award and a compensatory award. Article 156(4) of the Order states that the basic award shall be reduced by any payment already made by the employer to the employee on the ground that the dismissal was by reason of redundancy.

CONCLUSIONS

Automatically unfair dismissal

47. In this case, it was accepted by the respondent that the claimant had been dismissed. The tribunal was therefore required to consider whether:-

    (a) the statutory dismissal procedure was applicable in this case;

    (b) if so, whether the statutory dismissal procedure had been completed in this case; and

    (c) if not, whether any failure to complete the statutory procedure was due to fault on the part of the respondent.

48. The tribunal reviewed generally the requirements of the statutory dismissal procedure as outlined at para 35 above. On the night of 23 October 2012, the claimant received a letter inviting him to attend a disciplinary hearing the next night at midnight. The tribunal was satisfied that this letter fulfilled the requirements of step 1 of the statutory dismissal procedure. The claimant was also made aware that the outcome of the hearing could be his summary dismissal.

49. However, it is clear that the step 2 meeting must not take place before:-

(a) the employer has informed the employee what the basis was for including in the statement the grounds given in it, and

(b) the employee has had a reasonable opportunity to consider his response to that information.

In this case, the claimant was given no information about the basis for the grounds for his possible dismissal other than that it related to "a deliberate intention to take time off on 29 July 2012" (the date was incorrect). The step 1 letter was hand delivered to the claimant during the night shift on 23 October. Therefore, the claimant was given only 24 hours notice of the disciplinary hearing. The investigatory and disciplinary procedure had at that stage taken some 4 months. After receiving the step 1 letter, the claimant had to finish his night shift on the night of 23 October, sleep and then return to the factory for his night shift on 24 October before the hearing commenced at midnight. This gave the claimant very little time indeed to consider the information set out in the step 1 letter and prepare for the disciplinary hearing.

50. This was in contrast to the previous occasion when the claimant was invited to a disciplinary hearing, namely 6 September 2012 when he was given some 6 days notice of the proposed hearing on 12 September. The tribunal considers this to be a much more reasonable time-scale to allow the claimant to consider properly his response to the information provided.

51. The tribunal also had concerns in relation to the right to be accompanied at the disciplinary hearing. The tribunal believes that the claimant would ordinarily have asked Mr Wargacki to accompany him, but he was not at work that week. The claimant had very limited time to arrange for a companion to accompany him at the hearing. In the end, Tomasz was effectively selected by the respondent to accompany him. Whilst the claimant did not object at the hearing, the tribunal does not believe that the claimant had a meaningful opportunity to select a companion of his choice.

52. Accordingly, in view of the matters referred to above, the tribunal concluded that there was a serious failure to comply with step 2 of the statutory procedure in this case. The statutory procedure was therefore not completed and the tribunal reached the clear conclusion that such non-completion was wholly attributable to the respondent. Therefore, in accordance with Article 130A(1) of the Order, the tribunal concluded that the dismissal in this case was automatically unfair.

"Ordinary" unfair dismissal

53. Notwithstanding its conclusion in relation to automatically unfair dismissal, the tribunal considered it was appropriate to provide the parties with an indication of its view of as to whether the dismissal of the claimant would have been considered fair or unfair in accordance with established principles of unfairness.

54. On the basis of the evidence, the tribunal did not believe, as suggested by the claimant, that the true reason for his dismissal was redundancy or the need to cut costs as set out in the notice issued on 22 October 2012. The tribunal concluded that the respondent had shown that the reason for dismissal in this case was the conduct of the claimant around his trip to Poland at the end of June 2012. The tribunal was therefore satisfied that there was in this case a potentially fair reason for dismissal in accordance with Article 130(1) and (2) of the Order.

55. Generally, the tribunal had the sense that there was a change of focus in the course of the respondent's investigation. At the outset, the tribunal believes that the respondent suspected the claimant's reasons for the trip to Poland, but as the investigation progressed and more information and documents were produced by the claimant, the focus shifted to the question of whether the claimant had followed the correct procedure. During the hearing, it was clear that the respondent was not seeking to cast doubt on the claimant's motivations for returning to Poland, but rather the misconduct relied on by the respondent was that he had failed to speak to or obtain permission specifically from Mr Boone.

56. Having established that the respondent had shown the reason for the dismissal and that it was a potentially fair reason, the tribunal then proceeded to address the question of whether the dismissal was fair or unfair in accordance with Article 130(4) of the Order and the guidance for tribunals in dealing with cases involving conduct as set out at paras 39 to 42 above.

57. In this case, the reason given by the respondent for the dismissal of the claimant was essentially that he had failed to follow the correct procedure in relation to his absence from work from 28 June 2012. The claimant accepted that he had not spoken to his Production Manager Mr Boone and that this would have been the correct procedure. However, from the facts found by the tribunal, it was clear that the claimant had informed his supervisor Mr Wallace and Mr Wargacki, who was the union liaison person for the night shift staff and that a message had been left for the company's HR department. The tribunal was satisfied on the evidence that it had not been the claimant's intention to leave to go to Poland without letting the company know his intention to do so. The tribunal was also mindful that this was not a situation involving a pre-planned holiday, but rather effectively a family emergency relating to the serious illness of the claimant's father-in-law. The consequences of the claimant's absence were that production at the factory was disrupted for one night only until the respondent was able to arrange cover for the claimant's absence.

58. The tribunal was mindful that it should take care not to substitute its own view for that of the respondent. Bearing that in mind at all times, the tribunal considered the band of reasonable responses of a reasonable employer in this case. The tribunal weighed up the nature of the claimant's misconduct. This was essentially failure to speak to or seek permission from Mr Boone. The claimant had however spoken to

both Mr Wallace and Mr Wargacki and a message had been left for HR. The respondent company was not therefore unaware of the claimant's situation. This was a family emergency and not something which the claimant had time to plan. He had to react and take decisions quickly on the evening of 27 June. The respondent now accepted the reasons given by the claimant for his trip to Poland. Since the claimant's family lived in Poland, a visit to see them required the claimant to be away for a number of days. The consequences of the claimant's actions according to the evidence of Mr Boone were fairly limited. The claimant had 5 years service at the time of his dismissal and there was no evidence before the tribunal to suggest that he had any previous history of disciplinary issues. The respondent was also a fairly substantial employer with more than 300 employees and Mr Boone was personally responsible for some 70 employees.

59. Given all these factors, the tribunal were unanimously of the clear view that the decision to summarily dismiss the claimant was, in the circumstances, outside the range of reasonable responses of a reasonable employer.

60. Accordingly, had it been required to reach formal conclusions in this regard, the tribunal would have concluded that the dismissal of the claimant was unfair in accordance with "ordinary" principles of fairness in relation to conduct dismissals.

Reinstatement

61. The claimant in this case sought reinstatement to his former post. The tribunal therefore considered whether it should make an order for reinstatement in this case. The respondent's representative conceded in open tribunal that, in the event of the tribunal finding that the claimant had been dismissed, the respondent would have no difficulty in reinstating the claimant. Mr Boone also accepted in his evidence that he would have no difficulty in taking the claimant back.

62. The tribunal was satisfied that it was not impracticable for the respondent to reinstate the claimant. Whilst the claimant accepted that he had committed a breach of the respondent's procedures prior to going to Poland in June 2012, the tribunal was satisfied that this was not sufficient to mean that it would be unjust to order the reinstatement of the claimant. It was evident during the hearing that there was no rancour between the parties.

63. The tribunal therefore hereby orders the reinstatement of the claimant to the post of Production Operative in accordance with Article 148 of the Order. The claimant should therefore be treated in all respects as if he had not been dismissed.

64. As a consequence of the reinstatement, the respondent is hereby ordered to pay to the claimant arrears of pay as follows:-

£280 (net) per week between the date of dismissal and the date of the conclusion of the hearing, that is 3 June 2013 = 32 weeks x £280 = £8,960.00

Together with further arrears of pay to the date for compliance with the order for reinstatement, namely 19 August 2013 at the rate of £280 per week net = 11 weeks x £280 = £3,080.00

Total arrears of pay = £12,040.00 (net)

65. The claimant should receive any increase in pay or any other enhancement of terms and conditions awarded during the period between the 25 October 2012 and the date on which his reinstatement takes effect which the claimant would have received had he remained in employment throughout this period.

66. This order for reinstatement must be complied with by **19 August 2013.**

Recoupment

67. This award is subject to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations (Northern Ireland) 1996. The claimant claimed Jobseekers Allowance following his dismissal.

68. The monetary award is £12,040.00

The prescribed amount is £8,960.00

Which relates to the period between 25 October 2012 and 3 June 2013.

The amount by which the monetary award exceeds the prescribed element is £3,080.00

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

Chairman:

Date and place of hearing: 14 May and 3 June 2013, Belfast.

Date decision recorded in register and issued to parties:

CASE REF: 149/13

INTEREST NOTICE
INDUSTRIAL TRIBUNALS
INTEREST ON AWARDS IN NON DISCRIMINATION CASES

The Industrial Tribunals (Interest) Order (Northern Ireland) 1990 provides that interest shall accrue on a sum of money payable as a result of a decision of an industrial tribunal (not being an award to which the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (Northern Ireland) 1996 applies) where that sum remains unpaid in whole or part 42 days after the day the decision of the tribunal was issued to the parties. 'Decision day' in this context means the day the decision of the tribunal was issued to the parties and 'calculation day' means the day immediately after the expiry of the period of 42 days from (and including) the decision day. The 'stipulated rate of interest' is the rate of interest in force on amounts awarded by decree in the county court on the decision day. Interest does not accrue on costs or expenses awarded by the tribunal.

In this claim, please note that -

1. the decision day is 31st July 2013 being the day the decision was sent to the parties;
2. the calculation day is 11th September 2013 being the day immediately after the expiry of the period of 42 days from and including the decision day; and
3. the stipulated rate of interest is 8% being the rate of interest in force on amounts awarded by decree in the county court on the decision day.

Secretary of the Tribunals

IT

(26)

Case Ref No: *149/13*

CLAIMANT: **Krzysztof Podlejski**

RESPONDENT: **Camden Group Limited**

ANNEX TO THE DECISION OF THE TRIBUNAL

STATEMENT RELATING TO THE RECOUPMENT OF JOBSEEKER'S ALLOWANCE/INCOME SUPPORT

1. The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996.

	£
(a) Monetary award	£12,040.00
(b) Prescribed element	£8,960.00
(c) Period to which (b) relates:	25 October 2012 – 3 June 2013
(d) Excess of (a) over (b)	£3,080.00

The claimant may not be entitled to the whole monetary award. Only (d) is payable forthwith; (b) is the amount awarded for loss of earnings during the period under (c) without any allowance for Jobseeker's Allowance or Income Support received by the claimant in respect of that period; (b) is not payable until the Department of Health and Social Services has served a notice (called a recoupment notice) on the respondent to pay the whole or a part of (b) to the Department (which it may do in order to obtain repayment of Jobseeker's Allowance or Income Support paid to the claimant in respect of that period) or informs the respondent in writing that no such notice, which will not exceed (b), will be payable to the Department. The balance of (b), or the whole of it if notice is given that no recoupment notice will be served, is then payable to the claimant.

2. The Recoupment Notice must be served within the period of 21 days after the conclusion of the hearing or 9 days after the decision is sent to the parties (whichever is the later), or as soon as practicable thereafter, when the decision is given orally at the hearing. When the decision is reserved the notice must be sent within a period of 21 days after the date on which the decision is sent to the parties, or as soon as practicable thereafter.

3. The claimant will receive a copy of the recoupment notice and should inform the Department of Health and Social Services in writing within 21 days if the amount claimed is disputed. The tribunal cannot decide that question and the respondent, after paying the amount under (d) and the balance (if any) under (b), will have no further liability to the claimant, but the sum claimed in a recoupment notice is due from the respondent as a debt to the Department whatever may have been paid to the claimant and regardless of any dispute between the claimant and the Department.

IT

(29)