6701/119

Case Number: 3302277/2012

EMPLOYMENT TRIBUNALS

Claimants	**Respondent**
Mr D Wright and Others	**Purple Parking Limited**

Heard at: Watford **On:** 8 -17 January 2014

Before: Employment Judge Bedeau

Members: Mr P Jackson
Mr S Bury

Appearances

For the Claimants: Ms K Gardener, Counsel on behalf of Mr W Thomas, Mr M J Cousins, Mr G J Davies, Mr K R Reynolds, Mr R A Delicata, Mr R W Fox, Mr R Morton and Mr D Wright.

Mr E Small, claimant and lay representative, on behalf of Mr J E Barrow, Mr J J Abrahams, Mr M J Flood, Mr R P Govus, Mr F N King, Mr A N Fenton, Mr B T Davies, Mr A J Paisley, Mr J R Flynn.

Mr J W Duah, in person.
Mr C Shepherd, in person.

For the Respondent: Mr D Van Heck, Counsel

JUDGMENT having been sent to the parties on 31 January 2014 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The respondent provides park and ride as well as meet and greet parking at Heathrow Airport over two sites with a total capacity of around 12,000 spaces. It is an agent for airport parking across the United Kingdom. We were told and find as fact that it moves 10,000 vehicles a week at Heathrow and accounts for 90% of the off-parking airport market. Its insurance was due for renewal on 31 March 2012. The renewal of the insurance and the consequences which flowed from it has been the subject of these cases being presented to the tribunal. We have already given judgment based on the respondent's admission of liability. These cases were listed for a remedy hearing. The representatives agreed to hear four lead cases: Mr William Thomas; Mr Michael John Cousins; Mr Griffith John Davies and Mr Edward Small. For reasons due to his serious state of ill health we agreed to hear Mr John R Flynn's case along with the lead cases. We ruled on the five cases in relation to the issues before considering compensation.

The Issues

2. The issues we have to hear and determine were:

   2.1 Whether the claimants were entitled to be awarded exemplary damages?

   2.2 Whether the claimants were entitled to be awarded aggravated damages?

   2.3 The extent of the award for injury to feelings?

   2.4 Whether any aggravating features should be part of the injury to feelings award?

   2.5 Have the claimants mitigated their losses?

The Evidence

3. We heard evidence from the claimants and read their witness statements, schedules of loss and took into account their wage slips and P60s. On behalf of the respondent evidence was given by Mr Mark Ashley Hinge, managing director.

Findings of Fact

4. On 6 March 2012, Mr Mark Ashley Hinge, managing director, handed over responsibility for dealing with insurance matters to Mr Paul Smith, director, who subsequently became a shareholder. On 7 March 2012, Mr Smith contacted Mr James Mant of Greenfield Insurance Services with a view to Greenfield replacing the respondent's existing insurance brokers Jelf Brokers Limited.

5. On 9 March 2012, we are satisfied that Greenfield was formally instructed to handle the respondent's insurance renewal. We were told by Mr James Mant and by Mr Smith that due to the disproportionately high number of claims involving drivers over the age of 66 years that the respondent's insurance company, Allianz Insurance PLC, would not be able to insure drivers over that age.

6. On 13 April 2012, a letter was sent by Mr Mant to the respondent in which he stated that one of the restrictions, namely cover for employees aged 67 years and over would be excluded from the Allianz policy and they would no longer be insured to drive. The letter made reference to the deteriorating accident claims history and that Allianz had agreed to continue with cover subject to that restriction. According to the respondent, having regard to the restriction allegedly imposed by the insurers, Allianz, the drivers who formed the body of the claims before this tribunal, were written to on 17 April 2012 by Mr Neville Gow, operations director, who stated to the drivers that he regretted having to inform them that the insurance company was no longer able to insure employees over the age of 67 years to drive either on the compound or on the highway. He continued:

> "In order to maintain continuity of your employment past 30 June 2012 you would now have to make arrangements to provide your own motor vehicle insurance cover but it would have to be a motor trade road risk policy on a comprehensive cover basis."

7. The respondent was able to secure an extension to the insurance cover up to 30 June 2012.

8. On 25 April 2012, an email was sent to Mr Hinge and to Mr Inwards from Mr Gow stating,

> "Quite a few 67s and over have been to see me. They are all coming across of how unfair this whole episode is and they are annoyed with our insurance company rather than us. Brian Davies is asking why the bus drivers are being penalised pointing out that there are very few if any accidents with PCV bus drivers. He also advises that three separate MPs are being written to."

9. In order to explain its position to the affected drivers the respondent arranged a number of meetings, three in total, described as consultation meetings and gave the drivers affected the opportunity to elect representatives. The first such meeting was on 9 May 2012. Mr Hinge and Mr Smith were present. Some of the affected drivers were also present. It was explained to them the implications of the insurance age restriction. We find that the drivers' reaction to the respondent's position was one of shock and disbelief. They also disputed the figures put forward by the respondent in respect of the number of insurance claims involving those over the age of 67 years. Mr Hinge said that dismissals were a possibility if the respondent was unable to provide insurance cover. He also said that he was prepared to go back to Allianz to see whether or not the insurance issue could be resolved.

10. There was a further consultation meeting on 21 May 2012. Mr Smith, Mr Hinge and Mr Mant were present and from the notes taken, Mr Mant said:

> "We've had face-to-face meetings with a number of insurers. We have tried to pull in favours from insurers just to try to work with them. What we've ended up doing is talking to Allianz and basically saying look we know we've got a serious issue and they've come back and apply the terms that they have."

11. He then went further to say in answer to a statement made by one of those present that he had another client with a fleet policy with exactly the same issue. They ferried around disabled children and have got the same restriction under 25s or over 65. The restriction, he maintained, was not uncommon. These statements by Mr Mant, we are satisfied, were lies as the age restriction was never imposed by the respondent's insurer, Allianz.

12. There was the third and final meeting on 29 May 2012. Eight drivers attended. Mr Hinge and Mr Smith were also present. Mr Smith said another company, Allday Recruitment, was interested in talking to the at risk drivers. According to the meeting notes he had said:

> "Basically what I've been doing over the last few days is going through and talking with some agency drivers to see if there's any chance I can give you guys any preferential treatment in trying to get you another job basically because of the 67 rule coming in. I have had a chat with Allday and obviously the PSV drivers their point of view they are obviously very interested in having a chat with each individual and see if they can place you within their organisation."

13. Again further in the notes it is recorded that he replied to a question raised as to the independence of the agencies as they appeared to be organisationally associated with the respondent. He response was:

> "Basically I have spoken to the people and had in-depth chats with them and they are very willing because of the Purple Parking people that we have good reputations that they will give you the highest preference."

14. We are satisfied that that confident statement by Mr Smith was not communicated to those who were not present at the meeting.

15. On 6 June 2012, Mr Hinge wrote to the drivers informing them that he was in talks with local companies. He wrote:

> "As discussed in the meeting on 29 May Paul Smith has been holding talks with other local companies who specialise in driving positions and has been able to negotiate some potential openings for future employment. If you are interested in pursuing this option please contact Paul directly."

16. The actual names, contact details of the companies were not disclosed in that letter.

17. On 21 June 2012, Mr Hinge wrote again to the drivers informing them that they would be dismissed from their employment. Their last day of service

would be 30 June 2012 and that they would be paid on Friday 29 June. The letter went on:

> "As I mentioned in my letter of 6 June, Paul Smith has been holding talks with other local companies who specialise in driving positions and has been able to negotiate some potential openings for future employment. I am aware that some staff have found suitable employment already through this route so would recommend this course of action to take."

18. Again no details were given of the companies involved.

19. The affected drivers received their final salary on 29 June 2012. We find that on 30 June 2012 they were effectively dismissed.

20. They presented their claim forms alleging unfair dismissal and direct age discrimination within three months following their dismissal. From the standard response received to each of the claim form, the respondent argued that their dismissal was for some other substantial reason based on the age restriction imposed by its insurer. Of note in the response it stated:

> "It was not the respondent's policy to place restrictions upon those who were 67 years and older."

21. During the liability hearing from 30 September to 7 October 2013, the above statement was the respondent's position.

22. On 7 October 2013, the tribunal was of the view that it needed evidence from Allianz and Jelf in order to provide a complete picture as to what actually transpired from March to June of 2012. With the parties' agreement disclosure orders were issued on 10 October 2013 to the two companies. From the information forwarded by Allianz it clearly stipulated that it was the respondent that imposed the age restriction.

23. Significantly, Allianz sent a copy of a memorandum Greenfield had sent to the respondent dated 16 March 2012. This is a two page document. The significance of it cannot be understated. In the respondent's supplemental bundle provided to the tribunal and to the claimants on 3 October 2013 during the liability hearing, it only disclosed the first page of that memorandum. In the Allianz bundle of documents, in relation to that memorandum, it disclosed also the second page and on the second page Mr Mant wrote to the insurance company the following:

> "The client is looking to apply an upper age limit of 65 for employees to the road at risk section (excluding directors, spouses etc) however this would be around three months into the policy term. Could you please confirm the wording/clause can be included to this effect?
>
> In view of the extensive risk management undertaken by the client we will be looking for some movement on the renewal premium, as I am sure you will agree the insured is now, with our help, doing all they can to control claims.
>
> I would ask that you consider a low claims rebate."

24. We find that Mr Mant of Greenfield, either he or the respondent or both, deliberately failed to produce the second page of that memorandum to the claimants and to the tribunal. The reason, we find for this absence, is quite clear. The second page effectively destroyed the respondent's case. It revealed the lie the respondent was peddling to the claimants and to the tribunal in relation to the origins of the age restriction.

25. Mr Hinge's evidence before us was that he was unaware of the second page of the memorandum and accepted the first page from Greenfield as a complete document but the memorandum is in the form of a letter addressed to Allianz. We make this comment that it ought to have been expected that a letter would be signed off by the person who is the author of it. There is no signature on the first page but there is a signature and a name on the second page yet the absence of a signature did not cause Mr Hinge to make an enquiry.

26. On 3 December 2013, the respondent conceded liability and the case was adjourned and listed for remedy from 8 to 17 January 2014. On 31 December 2013, Mr Hinge wrote to the dismissed drivers apologising for the fact that their dismissal was based on a lie. We do not propose to read all of this letter but in the fourth paragraph he stated:

> "I was unaware of the existence of the documents that were produced by Allianz Insurance towards the end of the tribunal proceedings. Had these been produced at an earlier stage then the process that we have been through would have been very much reduced."

In the sixth paragraph he wrote

> "The fear that led to these changes at the time was that if the claims experience did not improve then the company would not be able to obtain insurance cover at all in the future, which would have threatened the future existence of the company."

He also wrote

> "I very much regret that alternative measures were not explored at the time, which may have prevented the job losses and subsequent dispute."

27. It was not clear to the tribunal what was meant by the failure to explore alternative measures.

28. In relation to the shareholding of the respondent, in its annual returns dated 31 January 2012, sent to Companies House, Mr Michael Richard Inwards is shown as the sole shareholder holding 375,002 ordinary shares. Mr Paul Smith is named as a company director along with Mr Gow. Mr Hinge is described as the company secretary and director. In its more recent annual returns dated 13 March 2013, the position of Mr Hinge remained the same. Mr Andrew John Waters became a company director on or around November 2012. Mr Inwards is listed as operations director. Mr Smith remained as a company director. Both Mr Inwards and Mr Smith are shown as holding 187,501 ordinary shares each. This is exactly half the shareholding of Mr Inwards as stated in the annual returns in 2012.

29. In Mr Hinge's witness statement he said that it was Mr Inwards who had made contact with Mr Mant. He also made contact with the insurance company, Allianz. Some time either on or after 6 March 2012, he stated that Mr Inwards issued verbal instructions to the company's new insurance broker, Mr Mant, regarding the age restriction. This dialogue took place without reference to the board at the time as it was communicated to Mr Hinge that Allianz was insisting on a number of new measures. In Mr Hinge's witness statement he pleads ignorance of the fact that Mr Inwards had given instructions to Mr Mant in relation to the age restriction. When Mr Hinge became aware after having received the documents from Allianz on or around 29 November 2013, he gave instructions to Mr Van Heck to concede liability. In our view that must have been with the consent of the two major shareholders Mr Smith and Mr Inwards as the respondent was going to pay the claimants compensation as a result.

30. The claimants have never accepted that there had been, at any stage, full and frank disclosure by the respondent of relevant documents in its possession, custody or control, and their view had been supported by the documents disclosed by Allianz in that they had never accepted the basis of the respondent's case in relation to age restrictions.

31. We have made our findings of fact based, principally, upon the evidence before the liability hearing as our findings will impact on the remedy issues we have to determine.

32. In these cases the claimants are seeking compensation under the age discrimination provisions which is unlimited as well as injury to feelings, exemplary and aggravated damages. In addition they are claiming financial losses under the unfair dismissal provisions but focusing on the basic award and on the loss of statutory rights.

33. We discuss below the parties' submissions in respect of aggravated and exemplary damages. We then proceed to set out the basis of our awards in respect of each claimant.

Submissions

34. We have taken into account the submissions by Ms Gardener, Mr Small and by Mr Van Heck in relation to injury to feelings, exemplary and aggravated damages. We have also taken into account the cases referred to us in the bundle of authorities, in particular, Rookes v Barnard [1964] AC 1129; Alexander v The Home Office [1998] ICR 685, Court of Appeal; Commissioner of Police of the Metropolis v Shaw UKEAT 0125/11; Vento v Chief Constable of West Yorkshire Police (No: 2) [2003] ICR 318, CA; Da'Bell v NSPCC [2010] IRLR 19,EAT; and Simmons v Castle [2012] EWCA Civ 1039, a case in which the Court of Appeal held that there should be a 10% uplift on all general damages awards, paragraph 20.

Conclusions in respect of Aggravated and Exemplary Damages

35. In relation to exemplary damages, the only category as set out in the judgment of Rookes v Barnard is the second one, namely was the respondent's conduct calculated to make a profit which may well exceed the compensation payable to the claimants? During the course of the evidence, both in relation to the liability hearing and what we have heard in relation to the remedy hearing, there was little evidence regarding the profit made by the respondent if there was any profit at all having regard to the age restriction. Mr Mant, in his memorandum to Allianz dated 16 March, made reference to a renewal rebate. There might have been savings in relation to the age restriction being imposed but we have not heard evidence that there was any profit exceeding the compensation payable to the claimants. Ms Gardener, during the course of her submissions to us, said that she was making an assumption that there was considerable cost savings. We have come to the conclusion that the claimants have not made out a case for an exemplary damages award.

36. In relation to injury to feelings and aggravated damages, here the tribunal did spend some time debating on the appropriate course of action to take having regard to the Employment Appeal Tribunal's judgment in the case of The Commissioner of Police of the Metropolis v Shaw. The EAT was at pains to emphasise that Employment Tribunals run the risk of awarding aggravated damages which may be seen and viewed as punitive; that if there were any aggravating features based on the conduct of the respondent that should be reflected in the injury to feelings award. Mr Van Heck invited the tribunal to adopt that approach in this case. Our view is that the EAT was not making a definitive ruling on the point. It was very cautious and stated that any changes in relation to aggravated damages must come from either the Court of Appeal, the Supreme Court and we say also from Parliament. In the final part of its judgment the EAT reduced the employment tribunal's injury to feelings award of £37,000 to £30,000 reflecting the injury to feelings and the aggravating features but alternatively and significantly, it decided for clarity, to separate the combined award into injury to feelings and aggravated damages, the sum of £22,500 was for injury to feelings and £7,500 for aggravated damages.

37. Having considered the matter, we accept Ms Gardener's submissions in respect of aggravated damages. We follow the approach in the Shaw judgment as it made reference to the Law Commission guidance in relation to how aggravated damages should be assessed. Under three heads: the manner in which the wrong was committed; motive and subsequent conduct. We also say that even if we are wrong in respect of separating injury to feelings from aggravated damages we will follow the judgment in Shaw and give in any event, a combined figure representing the degree of aggravation suffered by the claimants.

38. In relation to the manner in which the wrong was committed, this was based on a lie. Consultation meetings on 9, 21 and 29 May 2012 were, in our view, a sham. It was predicated on the basis that Allianz had imposed this age restriction and there was very little the respondent could do about it.

The respondent knew that it was going to dismiss the claimants based on that lie. It was persistent conduct on the part of the respondent from March to the claimants' dismissal on 30 June 2012 and later in 2013. The claimants did not accept the respondent's case but it seemed to the tribunal that eventually they were resigned to their fate. In relation to motive, Mr Inwards' motive was to use the age of the drivers to reduce the insurance premium and to provide the pretext for their dismissal. This was, in our view, blatant age discrimination. He was a shareholder of the company and what he said to Mr Mant, to Mr Smith and to Allianz, carried the full force of the respondent's position. In relation to the respondent's subsequent conduct Mr Inwards and, possibly Mr Smith, allowed the case to proceed and to be defended based on a lie.

39. From 6 March 2012, Mr Hinge handed over to Mr Smith the task of securing insurance cover for the following year. He worked closely with Mr Mant and Mr Mant received instructions from Mr Inwards in relation to the age restriction according to Mr Hinge. Mr Mant was instrumental in propagating the lie to the claimants, their representatives and to this tribunal. He deliberately attempted to mislead the tribunal into believing that the age restriction originated from Allianz and not by the respondent. We did not hear, during the course of the remedy hearing, from either Mr Smith or Mr Inwards. Had they attended they might have provided further clarity as to what transpired and why.

40. Having considered these three matters we do take into account the apology given by Mr Hinge in his letter to the claimants. In our view this was a qualified apology as he made reference to the need to take action based on the claims history. Notwithstanding the fact that he said that his knowledge of the lie was on 29 November 2013, Mr Inwards did nothing to clarify matters and it was Mr Hinge who apologised, in our view, late in the day on 3 December 2013.

41. We have come to the conclusion that not only the above five claimants but all of the claimants are entitled to aggravated damages.

Conclusions- awards to the claimants

42. In relation to injury to feelings, taking the claimants in turn, Mr Thomas who is now 72 years of age, told the tribunal that having worked for 50 years he found it humiliating to have been dismissed for not doing anything wrong. He had hoped to remain working for the respondent until the age of 75 years. This was the first time in his working life he had been dismissed. He began employment with the respondent on 5 May 1996. He was employed in the latter part of his service as head floater, a position we find as fact, did not involve driving. He could not understand why having not been engaged in driving duties he was selected for dismissal as a driver.

43. In our view his position is slightly different from that of the other claimants we are considering, in that we do take into account his statement that he felt deeply aggrieved not being a driver yet dismissed for being one. He told the

tribunal that following his dismissal, his normal daily routine changed and that he finds it unbearable having to stay at home.

44. In Mr Cousin's case he began his employment on 28 July 2005. He worked 47 hours a week as a chauffeur. He was born on 8 February 1935 and is now 78 years of age. He was 77 years of age when he was dismissed and here we correct an error in the liability judgment as we stated that he was under the age of 67.

45. Since his dismissal he experienced "a great deal of stress and anxiety." He told the tribunal that the respondent had demonstrated a dismissive attitude towards him and his colleagues. He was one of the employee representatives at the consultation meetings when it became obvious to him that lies were being told which he found to be particularly offensive. He would have continued to work for the respondent as long as he was physically able to do so. He has had sleepless nights, headaches and continuous stress. It had been particularly stressful for him over the past 18 months as the respondent had not been telling the truth.

46. In relation to Mr Griffith Davies, he was born on 3 February 1944, and was aged 68 at the date of dismissal. He worked for the respondent as a bus driver holding a heavy goods vehicle licence from November 2002. He was an employee representative, though this was not a unionised workforce. He said that he enjoyed working with his colleagues and having to deal with management. When he was dismissed he felt as though he had been thrown onto the scrap heap through no fault of his own. He found the experience insulting that the respondent was, in effect, saying that he was unfit to drive due to his age. He described his experience as hurtful and stressful. He wanted to carry on working for the respondent for many more years up to the age of 73 as his health was and is, good. He was hoping that working for the respondent would have been his last job before he finally retired. He felt privileged as an employee representative and he lost the enjoyment of working with his colleagues. It was for him congenial employment. He told the tribunal that "when you work you feel younger."

47. In his dealings with other drivers outside of the respondent's business, he was reminded of his own distress as they were aware of the claimants' experiences and were fearful for their own future as they were aware that the claimants had been dismissed on grounds of their age.

48. In Mr Small's case he was born on 20 December 1943 and was dismissed when he was aged 68 years. He was employed as a casual chauffeur. He commenced employment on 3 May 2010 and wanted to work for the respondent until age 75 years. He enjoyed the work environment. His place of work was near to his home. As his wife is disabled the hours were convenient. He experienced sleeplessness and anger at the way he had been treated by the respondent. He had been under considerable stress and this has affected his relationship with his family members.

49. Mr Flynn was born on 4 July 1943 and was aged 68 years at the date of his dismissal. On 12 July 1998, he commenced employment as a bus driver

and intended to work for the respondent until age 75 years. He found his dismissal distressing as he had not done anything wrong.

50. We have considered what ought to be the appropriate level of award in respect of injury to feelings in this case. We take the view that the injury to feelings award falls within the middle bracket of Da'Bell. All of the claimants wanted to work either until they were physically or mentally unable to do so or up to a certain age. They had lost the congeniality of their employment and were hurt because they had been dismissed through no fault of their own. They still feel hurt after 18 months. Their experiences have affected their personal lives and their relationship with their family members.

51. Mr Thomas and Mr Davies, we take the view, are in a different position when compared with the other three claimants we are considering at this stage. As already indicated, Mr Thomas felt particularly aggrieved as he did not engage in any driving duties. Taking these findings of fact into account, in his case the tribunal will award the sum of £12,000 in respect of injury to feelings.

52. In respect of Mr Davies, he had a specific role in that he officially represented his fellow drivers. It was for him congenial employment. He enjoyed putting their cases to and liaising with management. He felt particularly hurt when he was dismissed. We will award him the sum of £11,000 in respect of his injured feelings.

53. With regard to the remaining three claimants that is Mr Cousins, Mr Small and Mr Flynn, taking into account our findings we award each the sum of £10,000 in respect of their injured feelings.

54. As regards aggravated damages, bearing in mind our findings of fact we will award in each case the sum of £4,000. As already stated if the parties are interested in having a combined figure it is simply the case of adding the £4,000 to the injury to feelings award as that was the approach adopted in the case of Shaw by the Employment Appeal Tribunal.

55. We turn to the issue of mitigation. We have taken the parties submissions in relation to mitigation of loss not only in relation to these five claimants but in respect of all. We do not propose to repeat their submissions herein having regard to rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

56. The onus is on the respondent to show that there was a failure to mitigate. Going through the claimants in turn. In Mr Thomas's case we find that he was looking for driving work in Stevenage. He made 15 to 20 unsuccessful applications. A company called MBW offered him a job working two to three hours a day based at Heathrow but the journey involved a 36 miles round trip from his home and having regard to the rate of pay, he took the decision that it was uneconomical for him to accept the position. We have concluded that it was reasonable in the circumstances for him to have refused the offer purely on financial grounds. He was not invited to work for Allday or Drivers on Demand. These were the two companies the respondent had in mind

the dismissed drivers would be applying to for work. Mr Thomas did not apply to recruitment agencies or to the local job centre. He restricted himself to driving work. He did not broaden the scope or the range by applying for non-driving jobs. We bear in mind that this country is about to get out of a recession. The job market appears to be improving but that was not the case in June 2012. We also bear in mind all of the claimants' age and the sad reality of industrial life that there is discrimination at work. Mr Thomas could have done more in our view but it was unlikely to have had a positive effect as many people of his age are not in employment even if they are willing to work. We have come to the conclusion that he has mitigated his losses. With signs of improvement in the job market and if he applies to various recruitment agencies, widening his scope, we find that by the end of June of this year, 2014, he is likely to find suitable or comparable employment.

57. In Mr Cousin's case he was unemployed from 1 July 2012. On or around 10 October 2012, he worked for a company called AAP. On 14 November 2012, he was transferred to another company called Stress Free and that employment continued until 19 April 2013. He did not apply to Allday or to Drivers on Demand as they were paying less money; their workers had to buy their own uniforms; there were no guaranteed hours; no holiday pay; and no sick pay. In any event he had lost faith in Mr Smith whom he would have had to approach to obtain information about these agencies. We find that there was no guarantee had he contacted Mr Smith that he would have been offered employment by either of these two agencies.

58. During the course of the remedies hearing, no-one from these two recruitment agencies was called to give evidence in relation to the drivers' prospects of employment with them at the time. Indeed, we find that all of the claimants had lost trust and confidence in Mr Smith to provide them with sound, honest employment advice.

59. In Mr Cousin's case he mitigated his losses by obtaining employment in a comparatively short period following his dismissal. There was nothing to suggest that his employment with Stress Free was temporary and was regularly paid £311.54 net per week by that company. The parties agree that his net weekly pay with the respondent was £279.20. He was, therefore, earning more working for Stress Free than he would have earned had he remained with the respondent. In his case we have come to the conclusion that his employment with Stress Free broke the chain of causation. He is entitled to be compensated for the loss of earnings from 1 July to 10 October 2012.

60. In Mr Davies' case, on 1 July 2012, he found work with Allday Recruitment working for one of its clients, Menzies, as a bus driver. He was earning £230 net per week but was dismissed by Allday on 4 December 2013. Having regard to his employment with Allday, the parties agree that on a monthly basis the difference between what he was earning and what he would have earned had he remained with the respondent was the sum of £404 per month. On 6 December 2013, he obtained employment through an agency called First Choice working two days a week earning £130 net.

We find he too like the others had mitigated his losses. He has an HGV licence and in our view is likely to get full-time employment by 30 June 2014 having regard to the changing job market. In his case as he is working two days a week we do not take into account the greater difference in earnings compared with what he would have been earning had he remained with the respondent. The respondent could not account for what occurred on 4 December 2013. We will award the continuing difference in the pay of £404 per month up to 30 June 2014.

61. In Mr Small's case he had been unemployed for three months and subsequently obtained employment with a company called Impac driving a school bus. He was doing that work for six weeks but it was uneconomical for him to continue and he decided to stop. He told the tribunal that he applied to Stress Free Parking but was not offered employment. In total he applied for 100 jobs. He later destroyed the documents in his possession once his position and those of his colleagues were vindicated by the respondent admitting liability. He was earning £111.69 gross per week when he was working for the respondent. His net pay was £89.35 per week. He told the tribunal that he only heard about Allday after the first Employment Tribunal hearing. He maintained that the respondent did not suggest agency work to him. Having regard to his 100 job applications and the fact that he did find employment after three months but it was uneconomical to continue, we have come to the conclusion that he too had mitigated his losses. We would award Mr Small future loss up to 30 June 2014.

62. In Mr Flynn's case he told the tribunal that he applied for either six or seven jobs such as Tesco's, B&Q as well as to other retail establishments. His approach was simply to talk to a manager about vacancies. In relation to one enquiry he was blatantly told that he was too old to carry engines. He did not apply to Allday or to Drivers on Demand as he wanted to stay with the respondent and was most anxious for the respondent to change its mind during that period from March to June 2012. He told the tribunal that by Christmas of 2012, his medical condition, in his words "went down". He is currently on morphine and is expected, at some point, to come off this medication. In his case, however, we bear in mind what Mr Small said on 3 December 2013 when he applied for Mr Flynn's case to be heard at the same time as the lead cases because of his serious health condition. We decided to accede to the application. Sadly in his case we are satisfied that the evidence does suggest that he is unable in the future to engage in meaningful employment having regard to his current medical condition. He was unable to attend the hearing and gave evidence via a live telephone link. Compensation in respect of loss of earnings in his case will be limited to up to 8 January 2014. He does not make a personal injury compensation claim before this tribunal, therefore, his current medical condition is not causally connected with his dismissal.

63. We are satisfied that the ACAS uplift does not apply in this case as this was not a disciplinary dismissal. Likewise this is not a case that involves redundancy or redundancy pay.

64. Having made our findings in respect of mitigation we then go to the claimants' schedules of loss.

Mr William Thomas

65. In relation to Mr Thomas, on the first page of his schedule we accept the basic award of £4,615.44. In relation to the compensatory award, the loss of earnings from 30 June to 3 December 2013 is £14,230.94. We award him as we do with the other four lead claimants' loss of statutory rights in the sum of £400. He is entitled to his expenses as those flowed from the dismissal. The award up to 3 December 2013 is £14,680.94.

66. Moving on to future loss, from 3 December to 30 June 2014 is 30 weeks at £192.31 net. This gives the figure £5,769.30.

67. In relation to injury to feelings, we award £12,000 in his case. He is entitled to interest on the award for injury to feelings we award the sum there of £85.64 which is a daily rate of 16p. He is entitled to interest on past financial loss and here we have taken into account his loss of earnings of £14,230.94 applying that at 0.5% over the period of 521 days gives the figure of £50.78 at a daily rate of 10p. From our figures, in summary, the basic award is £4,615.44, the compensatory award is £14,680.94. Future loss is £5,769.30. The interest in respect of financial loss is £50.78. The sub-total thus far of £25,116.46.

68. In relation to the non-financial losses he is awarded £12,000 in respect of injury to feelings plus £85.64 interest on that sum and £4,000 aggravated damages. This gives the grand total in respect of compensation to Mr Thomas of £41,202.10.

Mr Michael John Cousins

69. In Mr Cousin's case, his net weekly pay was £279.20. The basic award in his case is one and a half weeks multiplied by seven multiplied by his gross weekly pay of £349. This gives the figure £3,664.50. In relation to loss of earnings, as we have found, he obtained better paid employment on 10 October 2012. There was no continuing loss that date. The period from 1 July 2012 to 10 October 2012 is 14 weeks multiplied by £279.20 gives the figure of £3,908.80. He is entitled to loss of statutory rights of £400. In relation to interest on the financial award of £3,908.80 it is at the rate of 3p per day. We award injury to feelings in the sum of £10,000 and the interest on that sum is £71.36. The interest per day is 13p. He is awarded £4,000 aggravated damages. In summary, the basic award is £3,664.50; the compensatory award is £4,308.80 plus £13.95 interest; the injury to feelings award is £10,000 with interest in the sum of £71.37; in addition aggravated damages of £4,000. The grand total in his case is £22,058.62.

Mr Griffith John Davies

70. In relation to Mr G J Davies, as we have already found, his monthly continuing loss is £404 net. In relation to his gross pay it was £404 per

week. His basic award is nine years multiplied by 1.5 weeks which is £5,454. His financial losses bearing in mind the fact that he had obtained employment is 18 months up to 3 December 2013 and is the sum of £7,272. In relation to future loss, from 1 January 2014 to 30 June 2014 we award £2,424. He is given £400 in respect of loss of statutory rights. In relation to interest on his pecuniary loss of £7,272 it is £29.95 and that equates to a daily rate of 6p. We have fund that he is not entitled to an ACAS uplift. The injury to feelings award in his case is £11,000 with interest on that sum is £78.50 a daily rate of 15p plus aggravated damages of £4,000. In summary, the basic award is £5,454, the compensatory award is £10,125.95, the injury to feelings plus interest is £11,078.50 plus £4,000 aggravated damages. The grand total in his case is £30,658.45.

Mr Edward Small

71. In Mr Small's case we were told at the end of the hearing last week that his gross weekly pay was £111.69, his net weekly pay being £89.35. In respect of the basic award it is two years multiplied by one and a half multiplied by £111.69 which gives the figure of £335.07. His loss of earnings to 3 December 2013 at £89.35 multiplied by 74 weeks is £6,611.90. He is awarded £400 loss of statutory rights. Interest on his financial loss is £23.59 and that equates to 5p per day. We award future loss up to 30 June 2014 of 30 weeks from 3 December 2013 in the sum of £2,680.50. Injury to feelings is £10,000 and interest on that sum is £71.36, the equivalent of 13p per day. Aggravated damages is £4,000. In summary, the basic award is £335.07; the compensatory award is £9,715.99; the injury to feelings with interest is £10,071.37 together with £4,000 aggravated damages. The grand total in his case is £24,122.43.

Mr John R Flynn

72. Finally Mr Flynn's case. As regards the basic award, he had 13 years' complete service multiplied by 1.5 multiplied by £327.25. He worked 42.5 hours a week at £7.70 per hour hence the gross weekly figure of £327.25. This gives the basic award of £6,381.38. His financial loss is 74 weeks to 3 December 2013 multiplied by his net weekly pay of £251.54. His loss of earnings is £18,613.96. In addition, we award £400 loss of statutory rights together with interest on the loss of earnings of £18,613.96 which is £66.42, the equivalent of 13p per day. In relation to future loss, as we have found, in our view Mr Flynn, regrettably, is unable to continue with meaningful employment having regard to his current medical condition. In his case, compensation in terms of his financial loss, is limited up to 8 January 2014 that is five weeks from 3 December 2013 at £251.54. His future loss is £1,257.70. In relation to the non-financial losses, his injury to feelings award is £10,000 with £71.36 interest. Aggravated damages is £4,000. In summary, he receives £6,381.38 in respect of the basic award; £20,338.08 in respect of the compensatory award; injury to feelings is £10,071.37 plus aggravated damages of £4,000. The grand total in his case is £40,790.83.

73. After hearing the first five claimants four of whom comprise of the lead cases and Mr Flynn whose case was considered exceptionally out of turn,

we heard evidence from the remaining 15 witnesses. In relation to Mr Shepherd his evidence, it was given by way of a conference call as he is currently in Barbados. We have read the witness statements and the schedules of loss adduced during the course of the hearing and having taken into account the oral as well as the documentary evidence, we made the following material findings of fact in respect of each of the 15 claimants and after hearing submissions gave judgment. As already stated we have taken the parties submissions in relation to mitigation of loss into account.

Mr James Ernest Barrow

74. In relation to Mr Barrow, after having been dismissed he decided to retire gracefully. He made verbal enquiries of his friends about vacancies and was told that there were none. He was given the number for Stress Free Parking but did not pursue it. We were not persuaded having considered the evidence in his case that he took all reasonable steps to look for employment. We are satisfied that after 61 years of service including 13 years with the respondent, he decided to retire. Given his initial shock at being told that he had been dismissed we would have expected him to have been engaged seriously in looking for work after a period of four weeks so, namely by 1 August 2012. Accordingly, his financial losses will be limited up to 1 August 2012. In relation to matters pertinent to injury to feelings he felt degraded as he had not done anything wrong. He was a representative during the consultation meetings. He suffered for 18 months and currently is suffering from his experiences at the hands of the respondent.

75. He would have continued to work for the respondent for some time although precisely when he did not tell the tribunal. We take the view that that would have been subject to his health.

76. Like with some of the earlier claimants, it is the tribunal's judgment in these 15 cases that they are all entitled to injury to feelings in the sum of £10,000. We have considered the matter very carefully and it seemed to us that there has been a consistent theme in all these cases. All of the claimants wanted to work for much longer than 30 June 2012 or April 2013 or August 2013 and they have all given similar accounts of their experiences following being told that they had been dismissed. It was very difficult for the tribunal to distinguish unlike with the first five cases, between these 15 claimants.

77. In relation to Mr Barrow's schedule of loss, firstly, dealing with his financial loss we take into account that his gross weekly pay was £151.30. His net weekly was £125.70. In relation to the basic award, he worked 13 complete years. The figure here is £2,950.35. His loss of earnings taking into account the limitation of four weeks up to 27 July 2012, it is four times £125.70 giving the figure of £502.80. He was entitled to notice and taking into account the four weeks that we have allowed he is entitled to a further eight weeks making it a total of 12 weeks. We, therefore, give him the sum of £1,005.60. We apply interest on the financial element of £6.80 which equates to 1p per day. We award £400 loss of statutory rights. The basic award, therefore, is £2,950.35; compensatory award is £1,915.20 with £6.80 interest; the injury to feelings including interest is £10,071.37; aggravated

damages, as in all of these cases, is the sum of £4,000. His total award is £18,936.92.

Mr John James Abrahams

78. In Mr Abraham's case, he applied for four jobs. He sent off his CV essentially for driving work. In August 2013 he was offered a job driving a minibus. This offer was made by the agricultural college in Maidenhead. Unfortunately, he did not have a D1 classification on his licence entitling him to drive commercially mini-buses as it had ran out. He was also required to have a medical at the cost £97. He sent off his application for the D1 accreditation in September of 2013 to the DVLA together with the medical documents. He told the tribunal that the medical tribunal at Swansea is currently considering his application and he is awaiting a decision. He visits the job centre regularly. He enjoys the freedom of driving and is confident that he is likely to get his D1 accreditation some time this year. In the tribunal's view he has mitigated his losses. His losses, however, will be limited to 30 June 2014.

79. In relation to matters pertinent to injury to feelings, he felt devastated when told he was dismissed. He had been working alternately three shifts and four shifts. For the past 18 months he has been looking for work. His experience has been disappointing. He feels frustrated, dejected and suffers from stress as a result. We are satisfied that there is no personal injury claim in his case.

80. In relation to his schedule of loss, his gross and net weekly pay are not challenged by the respondent. They are £226 and £175 respectively. In relation to the basic award, he is entitled to five years' service multiplied by 1.5 weeks per year multiplied by £226. This gives the figure of £1,695. In relation to his financial loss we take into account 74 weeks up to 3 December 2013 at the net weekly rate of £175. This gives the figure of £12,950 with interest at £46.21 which equates to 9p per day. He is entitled to £400 loss of statutory rights. In relation to his future loss from 4 December 2013 to 30 June 2014, is 30 weeks at £175 per week. This gives the figure £5,250. In summary, the basic award is £1,695; the compensatory award is £18,646.21; the injury to feelings is £10,071.37 and aggravated damages is £4,000. The total £34,412.58.

Mr Brian Terrence Davies

81. In relation to Mr B Davies he did not make any job applications. He looked through a local paper and said in his witness statement, "I was coming up to 75 years old therefore I decided reluctantly to retire." He was 75 years old on 23 December 2012. In the tribunal's view there was little evidence of his search for work thereafter. We have come to the conclusion that he failed to mitigate from the date of his birthday, namely from 23 December 2012. Accordingly, his financial loss will be limited up to that date.

82. In relation to matters pertinent to injury to feelings, when he was dismissed he said that he felt "gutted". The experience was very stressful and he felt

tense for nine months following his dismissal. He said that he intended to work for the respondent until he had enough. He enjoyed his job driving different cars. He has been married for 38 years. At home he would, in his words, "blow up" because of stress but is much calmer now.

83. In relation to his schedule of loss, his gross pay was £247.62, his net pay £198.10. In relation to the basic award, he commenced employment with the respondent on 22 August 2005. It was terminated on 30 June 2012. He completed six years' service. At 1.5 weeks for each year of service multiplied by £247.62, he is entitled to is £2,228.58. In relation to his financial loss, it is 22 weeks from the date of his dismissal to the 3 December 2012 at £198.10 per week. This gives the sum of £4,358.20. It is three weeks from 3 December 2012 to 23 December 2012 at £198.10 per week, the sum of £594.30. He is entitled to £400 loss of statutory rights. In relation to the loss of earnings alone, the interest is £15.60 and that equates to 3p per day. As regards the total claim, the basic award is £2,228.58; the compensatory award is £5,368.10; injury to feelings is £10,071.37 and aggravated damages £4,000. The grand total is £21,668.05.

Mr Arthur James Paisley

84. Mr Paisley applied to Meteor Stress Free Parking and was placed on its waiting list but no job was offered. He enquired in September 2012 of a vacancy for a delivery driver working at a local garden centre at the rate of £6.50 per hour but it was zero hours on an "as and when" basis. They would call him when required. As the work was uncertain it was not pursued by him. He applied to Trident Tours in February 2013 but was required to have a medical examination; he had to take a driving test and to demonstrate knowledge of the Reigate and Redhill areas which he did not have. He enquired about minicab work in Slough and Wycombe but he had to use his own car. This was not further pursued by him. He told the tribunal he had a pacemaker fitted in 2000 and is unable do anything too physical. He asked his family members who are in business in Chalfont St Peter, where he lives, whether there were any work available but there was none. He did not apply to the Epilepsy Centre or to the care homes in his area as it did not occur to him to make enquiries. He did not keep documentary evidence of his search. Overall we were satisfied that Mr Paisley did look for work and had made reasonable attempts in so doing.

85. His compensation will be limited like many of the claimants up to 30 June 2014.

86. In relation to matters relevant to injury to feelings he told the tribunal that he found his perfect job working for the respondent, he worked alternate afternoons three or four afternoons alternately each week. He was very angry when he was told that he was dismissed. He attempted to get his job back but was unsuccessful. Subsequently he was depressed. He felt he had a purpose in life when he was working for the respondent as he was contributing as a taxpayer and all of that had been taken away. It affected his private life. He enjoyed his job at Purple Parking.

87. In relation to the schedule of loss, we have looked at the P60 provided and have taken the figures from that document. His gross weekly pay, we find, was £116.44, net pay was £93.15 per week. In relation to the basic award, he completed eight years' service. His entitlement is 8 times 1.5 times £116.44. The sum is £1,397.28p. In relation to his financial loss, in terms of earnings to the hearing on 3 December 2013, is 74 weeks. We multiply that by the net weekly pay of £93.15 which gives the figure of £6,893.10. The interest on that sum is £24.60, the equivalent of 2p per day. He is entitled to £400 loss of statutory rights. In relation to future loss, it is 30 weeks from 4 December 2013 to 30 June 2014 at £93.15. This gives the figure of £2,794.50. In summary, the basic award is £1,397.28; the compensatory award is £10,112.20; the injury to feeling is £10,071.37 and aggravated damages £4,000. The total is £25,580.85.

Mr Michael John Flood

88. In relation to Mr Flood, he only looked through the local paper and made no enquiries and no applications. He asked friends to keep a look out for him. He did not want to do any agency work. He was aware of Allday and Drivers on Demand during the period of consultation. He, however, restricted his search to his local area.

89. We accept that being told that he had been dismissed he felt demoralised but like with Mr Barrow we would give him four weeks to recover, to overcome the shock of the dismissal before we would have expected him to engage seriously in his search for employment. After the four weeks' period, in our view, he failed to mitigate his loss. He, we are told, is entitled to 12 weeks' notice less the four weeks we have allowed for him to recover from his loss. He is, therefore, entitled to a further eight weeks in relation to loss of pay but only in respect of his notice period. His financial loss would, in the circumstances, be limited to the end of his notice period.

90. In relation to matters pertinent to injury to feelings, he felt angry because he lost the job he liked. He said the respondent gave no reason for getting rid of him. He had not done anything wrong. He wanted to work up until the age of 74 years but was dismissed when he was 68 years of age. His experience has been distressing, hurtful and demoralising.

91. In relation to his schedule of loss, the basic award is assessed taking into account 12 years' service at the rate of 1.5 weeks for each year of service, namely 18 weeks. We multiply 18 weeks by £209.70 gross per week. This gives the figure of £3,774.60. Four weeks from his dismissal at £167.75 is £671. We award him £400 loss of statutory rights. If we deduct the four weeks from his notice pay that leaves eight weeks at £167.75. That gives the figure £1,342. We add interest to the financial loss of £7.18. In summary, the basic award is £3,774.60; the compensatory award is £2,420.18; injury to feelings is £10,071.37 with £4,000 for aggravated damages. The total is £20,266.15.

Mr Ronald Phillip Govus

92. In Mr Govus' case, Mr Van Heck submitted that he had mitigated his loss. We respectfully agree with that submission. He worked for AAP and later Stress Free Parking until 24 April 2013. He made some 70 job applications since April of last year. He told us that he was 68 years of age at date of termination and had completed 10 years' service. He was born on 31 January 1944.

93. In relation to injury to feelings, he could not understand why he was dismissed. He questioned himself as to whether or not he would need to sell his car and whether he was going to get insurance cover having regard to his age. Fortunately for him his fears were allayed as another company was prepared to insure him. He said that he would lie awake at nights until 3 am in the morning worrying about his position. He could not work out why he had been dismissed as he had not done anything wrong. The whole experience has been stressful for him.

94. Form his P60 we have calculated his weekly gross salary at £260.10. In relation to his schedule of loss, we have to take into account his work with AAP and with Stress Free Parking and the difference in earnings. With AAP he worked for 19 weeks. His earnings, he told us, were £73.68 gross per week. With Purple Parking his weekly earnings were £210.77. The difference between Purple Parking and AAP in terms of earnings is £137.09 per week. The loss to him over the 19 weeks was £2,604.71. With Stress Free Parking he worked 23 weeks and earned £150.49 gross per week .We have made an adjustment in relation to income tax of £1.52. The net weekly figure in relation to his earnings with Stress Free Parking was £148.97. The difference between that figure and his Purple Parking salary is £61.80 net per week. His loss over the 23 weeks he worked for Stress Free Parking is £1,421.40. Therefore his total loss of earnings up to 23 April 2013 is £4,026.11. We take into account that the respondent was not responsible for the termination of his employment with Stress Free but he is entitled to the difference in earnings up to 30 June 2014. From 24 April 2013 to 3 December 2013 is 32 weeks, 32 multiplied by 61.80 is £1,977.60. His loss to the hearing taking into account the figures that we have given is £6,003.71 that is taking into account the difference in earnings with AAP and Stress Free Parking up to 3 December 2013.

95. In relation to future loss, from 4 December 2013 to 30 June 2014 is 30 weeks at £61.80 per week. This gives the figure of £1,854. We have assessed his interest as £21.40.

96. The basic award is 10 years multiplied by 1.5 weeks at £260.10 is £3,901.50.

97. In summary, the basic award is £3,901.50; the compensatory award taking into account loss of statutory rights and interest, is £8,279.11; injury to feelings £10,071.37 with £4,000 in respect of aggravated damages. The total sum is £26,251.98.

Mr Frank Noel King

98. Moving on to Mr King, he was not aware of Allday and Stress Free until liability hearing well after he had been dismissed. He applied to Sainsbury's, Tesco's and Iceland and was told that there were no vacancies. He visited the local job centre; enquired about driving roles; he searched the local paper and asked six to eight friends to keep an eye out for him for any suitable vacancies. The driving job with the respondent was as a meet and greet chauffeur and was close to his home. He did not want to be idle. Having considered our findings of fact we came to the conclusion that he had mitigated his loss but it would be limited up to 30 June 2014.

99. In relation to injury to feelings, when he was dismissed, he was devastated as the job was ideal for him. He said he waited for a long time for justice and attended all tribunal hearings. He wanted to work up to 2015. He still feels hurt losing his job as he did not do anything wrong.

100. In relation to his financial losses these have been assessed based on the previous three years' earnings but he failed to take into account that the tribunal could only look at his average earnings or at his actual earnings where those can be discerned. We have taken into account his P60 in arriving at our figures.

101. His gross weekly income was £230.34, his net £184.28. He completed five years' service. His basic award, therefore, is £1,727.55. From 1 July 2012 to 3 December 2013 is 74 weeks. 74 multiplied by his net weekly pay of £184.28, is £13,636.72. We add interest of £48.66 which is 5p per day. We award £400 in respect of loss of statutory rights. In relation to future loss, it is 30 weeks at £184.28 which gives the figure of £5,528.40. Again we assess the same awards in respect of injury to feelings of £10,000 and aggravated damages of £4,000.

102. In summary, the basic award is £1,727.55; compensatory award, in total, is £19,613.78; injury to feelings plus interest is £10,071.37 and aggravated damages is £4,000. The total award is £35,412.70.

Mr Alan Neal Fenton

103. Mr Fenton was employed by the respondent as a floater working with Mr Thomas and Mr Griffiths. He commenced employment with the respondent in May 1998. He applied to a company called Valet Parking and to Meteor in May 2012 prior to his dismissal for driving work but there was no reply. He enquired of and spoke to someone at AAP about working for that company. They promised to call him when required but he did not hear from them. Since 1986 he has been working at a Sainsbury's supermarket and had been working there while he worked at Purple Parking. His hours at Sainsbury's are 11 am to 7 pm five days a week. He told the tribunal that he was able to secure a further day's work on Saturday to supplement his decreased earnings. He is looking for work outside his Sainsbury's hours, that is for employment on a part-time basis between 5 am and 10 am in the morning but up to the present he has been unsuccessful.

104. In relation to the increased hours at Sainsbury's, he was given work on Saturday in July 2013. He currently works 47 hours at Sainsbury's.

105. In the tribunal's view he has mitigated his losses by looking for work particularly when under threat of dismissal and had secured an additional day's work at Sainsbury's.

106. Our judgment in relation to mitigation, however, is qualified. By the end of December 2012, in our view, he ought to have realised that if he wanted to increase his earnings to what he was earning when he was working for the respondent, he had to actively look for work and possibly consider agency work which he was not willing to do. We were not satisfied that he had mitigated his losses after 31 December 2012.

107. In relation to injury to feelings, he told the tribunal that he experienced sleepless nights and more recently was unable to sleep following the tribunal's earlier judgment in relation to remedy in respect of the lead cases. It was the first time in his working life he had ever been dismissed and found the experience humiliating, insulting and offensive.

108. Taking into account his P60, we have amended his schedule of loss. In essence we have increased the figures on the first page of his schedule in relation to his annual earnings and his net weekly salary. His net weekly salary, we find, was £163.24. His basic award, having worked 14 complete years, is £4,285.05.

109. From 1 July to 31 December 2012 is 26 weeks. We take into account the net weekly pay of £163.24 with the respondent less the earnings in respect of his overtime at Sainsbury's that we have assessed at £83.55. This gives the balance of £79.69 per week multiplied by 26 weeks is £2,071.94. We add interest in the sum of £7.39 which equates to 1p per day. We award him £400 loss of statutory rights.

110. In relation to injury to feelings and aggravated damages the awards are the £10,000 and £4,000 respectively.

111. In summary, the basic award is £4,285.05; compensatory award is £2,479.33; injury to feelings is £10,071.37 and aggravated damages is £4,000. The total is £20,835.75.

Mr Joseph Wilberforce Duah

112. In Mr Duah's case, he worked as a bus driver for the respondent. He commenced his employment on 2 March 2003 and at the date of his dismissal worked 52½ hours a week. He has been looking for accounts, driving and other work after his employment was terminated. He visited his local job centre, registered with two agencies and made applications by telephone to various companies but when the subject matter turn to his age it became a bar to obtaining employment or to his enquiry proceeding any further. His applied for five accounts positions and two driving jobs. He did not know about Stress Free Parking and did not apply to Allday or Drivers

on Demand as their terms and conditions were not to his liking. He has been unable to find work following his dismissal. Having considered his evidence we were satisfied that he had mitigated his loss. The assessment of compensation would be limited up to 30 June 2014.

113. In relation to injury to feelings, he was aged 69 years at the date of dismissal. He intended to work for a further three years with the respondent. He said that he felt "bad" at being told he was dismissed. He currently feels depressed.

114. In relation to his schedule of loss, we have revised it taking into account his P60. The gross weekly was £560.65 which will be subject to the statutory maximum at the time of £430. Multiplying nine complete years by 1.5 weeks by £430, we get the figure £5,805 in respect of the basic award.

115. His net weekly pay was £447.73. From 1 July 2012 to 3 December 2013, is 74 weeks at £447.73. This gives the figure of £33,132.02. The interest on that sum is £118.23 which is 23p per day. We award him £400 loss of statutory rights.

116. In relation to future loss of 30 weeks at £447.73, it comes to £13,431.90. Again we give the same awards in respect of injury to feelings and aggravated damages of £10,000 and £4,000 respectively. In his case, however, his financial loss exceeds £30,000. If we add £33,132.02 plus interest of £118.24 to £13,431.90 it comes to £46.682.16. As that figure is above the £30,000 exempt from income tax, we have to gross the excess of £16,682.16. We multiply that figure by 100 over 60 which is £27,803.60. We then add that figure to the £30,000 that we have deducted. This gives the figure £57,803.60. We add the loss of statutory rights of £400. The total compensatory award is £58,203.60. In summary, the basic award is £5,805; the total compensatory award is £58,203.60; injury to feelings is £10,071.37 and the aggravated damages is £4,000. The total award is £78,079.97.

Mr Carlyle Fitzroy Shepherd

117. In Mr Shepherd's case, he applied for eight or nine jobs. He tried Stress Free but the company did not reply to his enquiry. He applied to Accident Repair but there was no offer of employment. He also applied for cleaning jobs. His daughter tried to get him a job working where she worked at the time at Sainsbury's but she left and he was unable to pursue it further. He was unaware of Allday and Drivers on Demand. With his daughter's assistance, he registered with three internet sites. She also visited the local public library to search for suitable work for him. He made a number of unsuccessful telephone enquiries. He told the tribunal that he applied for work at a car mechanic shop in Harrow but there was no vacancy. He had a job search plan but it was not completed by him. He was unable to submit that document as part of his evidence.

118. Having considered the evidence the tribunal was satisfied that he had mitigated his loss. Compensation in his case will be limited, like the others, up to 30 June 2014.

119. In relation to matters pertinent to injury to feelings, he was going to work for the respondent as long as he was physically and mentally able to. His dismissal affected his pride and confidence and he became anxious looking for work. The job gave him a sense of self-worth. He felt hurt, panicked, scared and crushed. He also felt angry towards the respondent. He has now come to terms with the loss of his job.

120. Considering his schedule of loss, he too had taken his average yearly earnings over three years. We have considered the position as at 2012. This showed that his gross earnings were £17,889.89. His weekly gross was £344.04. We have taken into account the figures he gave in his schedule in relation to the gross and net weekly pay and the difference between those two figures is 64%. We have applied that difference to the gross weekly figure of £344.04 and we have come to £220.19 being the net figure.

121. As regards the basic award, he worked nine complete years for the respondent. We apply the formula of 9 multiplied by 1.5 by £344.04, the award is £4,644.54. His loss to 3 December 2013 at £220.19 multiplied by 74 weeks and is £16,294.06. This sum attracts interest of £58.15 which is 11p per day. He is awarded £400 in respect of loss of statutory rights. 30 weeks from 4 December to 30 June at £220.19 gives the figure of £6,605.70. Again the same awards in respect of the injury to feelings and aggravated damages of £10,000 and £4,000 respectively. In summary, the basic award is £4,644.54; the total compensatory award is £23,357.91; injury to feelings is £10,071.37 with £4,000 in respect of aggravated damages. The total award in his case is £42,073.82.

Mr Keith Robert Reynolds

122. Mr Reynolds applied to Fly Away Parking, Age Concern a car parts delivery company, Carey Worldwide, Willis Motors but was not offered employment. He last applied for work in August 2013. He did painting and decorating with his brother-in-law for a brief period. His brother-in-law moved away and he was unable to continue with that work. He searched local papers for suitable employment. He has no formal qualifications. He picks up his grandchildren from school and is looking for work with an early start to enable him to continue to collect his grandchildren. His driving work with the respondent took into account the times he would pick up his grandchildren from school. His Purple Parking employment fitted his particular lifestyle. Having considered his evidence, we were satisfied that he had mitigated his loss. Assessment will be limited to 30 June 2014.

123. In relation to matters relevant to injury to feelings, he found his dismissal stressful and prior to being dismissed he was constantly asked when he would be leaving. He did not want to leave his employment. He has been working all of his working life. He was dismissed on 8 February 2013.

There is currently nothing to get up for in the morning. He previously worked as a milkman and feels now that he is no longer needed. He is angry and frustrated. The reason being that he had not been told the truth by the respondent. He also had to endure listening to the respondent's dishonest evidence before the tribunal. He was aware that during 2013 the respondent continued to dismiss drivers who had reached the age of 67 years.

124. In relation to his schedule of loss, we have assessed his net weekly pay at £213.77, his gross at £263.46. His basic award after eight years' service is £3,161.52. He was paid twelve weeks' pay in lieu of notice from 2 November 2012. His loss from 8 February 2013 to 3 December 2013, 44 weeks, is £9,405.88. The interest on that sum is £19.84. In respect of the future loss from 4 December 2013 to 30 June 2014, is 30 weeks at £213.77. This gives the figure of £6,413.10. We award him £400 in respect of loss of statutory rights. For injury to feelings we award £10,000 and for aggravated damages £4,000. In summary, the basic award is £3,161.52; the compensatory award is £16,238.82; injury to feelings is £10,071.37 and aggravated damages is £4,000. The total sum awarded is £33,471.71.

Mr Robert Anthony Delicata

125. As regards Mr Delicata, he applied to Home Base and enquired of Wickes as to whether there were any vacancies. He searched the local paper each week for driving work. He registered with a search engine that sent him vacancies every four to six weeks but the positions available were full-time and well away from his home. Having considered in his evidence we were satisfied that he had mitigated his loss but it will be limited up to 30 June 2014.

126. In relation to matters pertinent to injury to feelings, he felt hurt and annoyed as he could not see a reason for his dismissal. He subsequently experienced headaches. He said that his wife believed that his personality had changed. He feels that his working life has come to an end. He has sleepless nights and his quality of life, he said, had decreased.

127. He has submitted an amended schedule of loss. His gross pay per week was £135.46 with net weekly earnings of £108. He completed five years' service with the respondent. Applying the formula, the basic award is £1,015.95. We award loss of statutory rights of £400. His loss of earnings to 3 December 2013, a period of 74 weeks at £108 per week, is £7,992. Interest of that sum is £28.52 which equates to 5p per day. His future loss of 30 weeks at £108 per week is £3,240. For injury to feelings we award £10,000 and for aggravated damages the award is £4,000. In summary, the basic award is £1,015.95; the total compensatory award is £11,660.52; injury to feelings with interest is £10,071.37 and aggravated damages is £4,000. The total award is £26,747.84.

Mr Richard Wayne Fox

128. In Mr Fox's case he applied to Meteor Parking, MBW Parking, Drivers on Demand, Drivers Direct, and Marinello. He searched the websites of local retail groups such as Currys, PC World, Sainsbury's and Home Base, all to no avail. His first application was a month following his dismissal. Mr Van Heck, in his submissions, qualified the mitigation in his case but we find that Mr Fox had mitigated his loss but compensation will be limited up to 30 June 2014.

129. As regards Mr Fox's injured feelings, we find that he wanted to work for a further six years at Purple Parking as the job was suitable. He felt hurt when the truth came out about the insurance position. He believes that he was one of the respondent's top performers. There is currently a void in his life. He is not able to relate to his work colleagues anymore.

130. In relation to his schedule of loss we have amended his net annual salary to £16,363.50. His gross weekly pay we have assessed was £401.61. His employment was terminated on 10 April 2013. He worked six complete years. His basic award is £3,614.49. From 11 April 2013 to 3 December 2013, is 35 weeks. His net weekly pay was £314.68. His loss, therefore, from 11 April to 3 December 2013, was £11,013.80. Interest on that sum is £18.48 which is 7p per day. In relation to future loss, it is 30 weeks at £314.68 which is £9,440.40. We award him £400 loss of statutory rights. For injury to feelings we award £10,000 and for aggravated damages we give him £4,000. In summary, the basic award is £3,614.49; compensatory award, in total, is 20,872.68; injury to feelings with interest is £10,071.37 and aggravated damages is £4,000. The total sum awarded is £38,558.54.

Mr Ronald Morton

131. In Mr Morton's case, he told the tribunal that he worked his six weeks' notice but we assess his entitlement to be 12 weeks as he worked 15 complete years with the respondent. He commenced employment with the respondent on 1 June 1998 and was dismissed on 13 August 2013. At the time of his dismissal he was engaged in casual driving work. He also works as a full-time mechanical engineer for an agency working 48 hours a week. He spoke to people who worked at Heathrow airport about airport work but there were no positions available. He, unsuccessfully, enquired of two companies at the airport for work but nothing would fit alongside his full-time hours.

132. We find that taking into account the initial shock of his dismissal, he ought to have been looking for employment six weeks later. This would take him to the end of his 12 weeks,' notice, therefore, his financial loss will be limited effectively up to the end of his 12 weeks' notice.

133. In relation to his evidence in respect of injury to feelings, we find that it was upsetting for him to have lost his job. He has a mortgage and had to sell his car. Like most of the claimants he wanted to work for the respondent for

many more years. His dismissal was upsetting, hurtful and caused him unnecessary stress.

134. In relation to his schedule of loss, the net weekly and the gross weekly pay were the same, £94. His basic award is £2,115. We give him further loss of six weeks of £94 per week which is the sum of £564 with interest of only 42p. For injury to feelings we award £10,000 and for aggravated damages, £4,000. In summary, the basic award is £2,115; compensatory award is £964.42; the injury to feelings with interest is £10,015.06 and for aggravated damages it is £4,000. The total sum awarded is £17,094.48.

Mr Derek Wright

135. Finally Mr D Wright. He worked 54 hours per week and knew his dismissal was imminent. He, therefore, applied for work prior to his termination and was able to start work with Drivers Direct on 15 July 2012 driving a school bus carrying children with special needs working for Hounslow Council. On 1 May 2013, he became a permanent part-time employee of the Council. Sometimes he would work 18 hours a week on other occasions 23 hours. His hours of work are 7 am to 9.45 am and in the afternoon, 2.30 pm to 4.30 pm. Having considered his evidence we have concluded that he had mitigated his loss. The assessment will be limited up to 30 June 2014.

136. We find in relation to his evidence relevant to his injured feelings that he wanted to work for the respondent for as long as he was able to because, he said, he does not have a proper pension. The work with the respondent was suitable employment for him. His dismissal has been very hurtful and stressful. He felt because of his age like he had been thrown onto the scrap heap. The respondent's conduct during these proceedings he described as insulting.

137. In relation to his schedule of loss, we have assessed his net weekly pay at £299.86. His basic award is £3,519. We have to take into account his earnings while he was working for the agency and latterly the Council and what he would have been earning had he continued to work for the respondent. His net weekly pay from the agency from 15 July 2012 was £131.70. If we deduct that from the net weekly that he was earning with the respondent of £299.86 the difference is £168.16 per week. We were told that his net earnings with the Council is £159.63. The difference in earnings with the respondent and the Council is £140.23 per week. From 1 July to 15 July 2012, he was not earning. He is, therefore, entitled to be compensated for his loss of income as if he was working for the respondent in the sum of £299.86 per week over two weeks. This gives the figure £599.72. From 15 July 2012 to 1 May 2013, he worked 42 weeks at £168.16, the difference in earnings, which gives the figure of £7,062.72. From 1 May 2013 to 3 December 2013, a period of 31 weeks, he is entitled to be compensated at £140.23 each week which is £4,347.13. The interest on the combined figure of £12,009.57 is £43.18. This equates to 8p per day. In terms of future loss, we continue with the difference of £140.23. From 4 December 2013 to 30 June 2014, a period of 30 weeks. His loss during that period is £4,206.90. We award loss of statutory rights of £400 and £10,000 in

respect of injury to feelings as well as £4,000 for aggravated damages. In summary, the basic award is £3,519; the compensatory award is £16,659.65; the injury to feelings with interest is £10,071.37 and aggravated damages is £4,000. The total sum awarded is £34,250.02.

138. This concludes the tribunal's judgment in respect of remedy in these cases.

139. The tribunal clarified with Ms Gardener that in assessing compensation, we looked at the claimants' P60s provided. As their total earnings included bonus, we did not award a separate sum in each case in respect of bonus.

Costs

140. After giving judgment in respect of remedy the parties informed the tribunal, after the luncheon adjournment, that costs were agreed. In respect of Mr Griffith Davies, Mr Wright, Mr Morton, Mr Fox and Mr Reynolds, the agreed sum that the respondent should pay in respect of them all is £23,000.

141. In respect of Mr Delicata, the respondent agreed to pay £12,832.10

142. In respect of Mr Cousins, the respondent agreed to pay the sum of £20,000.

143. In respect of Mr Thomas, the respondent agreed to pay the sum of £12,000.

144. In relation to Mr Small's preparation time, the respondent agreed to pay the sum of £924.

Employment Judge Bedeau

Date: .....

Judgment and Reasons
sent to the parties on: 15/4/2014

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For the Tribunal Office

6701/119

EMPLOYMENT TRIBUNALS

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Date 31 January 2014

Case Number 3302277/2012 and others

Claimants and Case Numbers

2702817/2012	Mr W Thomas	v
3302277/2012	Mr D Wright	
3302278/2012	Mr GJ Davies	
3302832/2012	Mr JE Barrow	
3302842/2012	Mr JJ Abrahams	
3302867/2012	Mr BT Davies	
3302892/2012	Mr C Shepherd	
3302893/2012	Mr MJ Flood	
3302894/2012	Mr JR Flynn	
3302895/2012	Mr E Small	
3302898/2012	Mr RP Govus	
3302899/2012	Mr F King	
3302904/2012	Mr BT Davies *	
3302905/2012	Mr AN Fenton	
3302934/2012	Mr MJ Cousins	
3302944/2012	Mr J Duah	
3302947/2012	Mr R Delicata	
3302948/2012	Mr AJ Paisley	
3301726/2013	Mr KR Reynolds	
3301942/2013	Mr RW Fox	
3303772/2013	Mr R Morton	

Respondent
Purple Parking Limited

EMPLOYMENT TRIBUNAL JUDGMENT

A copy of the Employment Tribunal's judgment is enclosed. There is important information in the booklet 'The Judgment' which you should read. The booklet can be found on our website at www.justice.gov.uk/tribunals/employment/claims/booklets

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

The Judgment booklet explains that you may request the employment tribunal to reconsider a judgment or a decision. It also explains the appeal process to the Employment Appeal Tribunal. These processes are quite different, and you will need to decide whether to follow either or both. **Both are subject to strict time limits.** An application for a reconsideration must be made within 14 days of the date the decision was sent to you. An application to *appeal* must generally be made within 42 days of the date the decision was sent to you; but there are exceptions: see the booklet.