



**Qualifying Test Paper:**

00441: Fee Paid Employment Judge (2010)

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## Instructions

The test has been designed by Employment Judges and will assess the following qualities and abilities:

- **Intellectual Capacity:**
  - Ability quickly to absorb and analyse information
  - Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary
  
- **Authority and Communication Skills**
  - Ability to explain [the procedure and] any decisions reached clearly and succinctly (in writing)
  
- **Efficiency:**
  - Ability to work at speed and under pressure

You have **90** minutes to read the paper and complete the test either using a laptop or in manuscript depending on the process you have chosen.

The preparation materials have been provided separately.

You may write on any documents but must not remove them from the assessment room

The test consists of a case scenario and **15 questions**. In total **100** marks are available. The mark for each question is shown in brackets.

You may answer the questions in any order however, please ensure that you clearly indicate which question is being answered on your script and write/type the word **END** after your last answer.

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## **CASE SCENARIO**

Crumple & Son Ltd ('the company') manufactures electrical components for the automotive industry. It employs a total workforce of about 5,000 staff. Its registered office is in London. The company is also located in Glasgow, Belfast, Cardiff and Birmingham.

The company employs 850 staff in Birmingham. Of these, 825 employees are engaged in manufacturing components. The remaining 25 employees undertake administrative work for the Birmingham plant. Of those, 5 employees are skilled computer operators (John, Barbara, Rupinder, David and Priah). Their job roles include maintaining stock records and ordering materials used in the manufacturing process.

In January 2009 the company's senior management uncovered misuse of the company computers at Birmingham. Three computer operators were found to be spending several hours each week accessing the Internet for personal use. Management interviewed all five computer operators as a group and then individually. In February 2009 they were warned that there was to be no further personal use of the company's computers. A written statement was issued to each of them explaining that thereafter personal use of the company's computers would be regarded as gross misconduct leading to instant dismissal. Each employee acknowledged in writing receipt of the statement.

Soon this restriction on computer use became a problem. It was necessary occasionally to access the Internet in connection with the company's business. To overcome the difficulty in March 2009 management provided a secret access password to one of the computer operators, John. This allowed him to access the Internet and to do such Internet-related work as was necessary.

This arrangement worked well for a few weeks. However, John became increasingly annoyed that only he carried out the Internet-related work. Without management's agreement or knowledge, in April 2009 John gave the secret password to Barbara, another computer operator, so that she could assist with the Internet-related work. Barbara agreed to this arrangement. Thereafter John and Barbara used the password and shared the Internet-related work between them.

Barbara was a keen football supporter. From time to time she used the secret password to access the website of her football club for about five minutes each day. In late May 2009, Rupinder saw what Barbara was doing. He persuaded Barbara to tell him the password. In turn Rupinder gave the password to David.

In the week commencing 1 June 2009, Rupinder spent two hours on the Internet for personal use and David five hours for personal use. When John discovered this, he panicked. He approached the company's senior managers and told them what had happened. The managers immediately changed the password. They then checked the computer terminals used by the five computer operators. They discovered that

John did not use the Internet for personal use. During May 2009 and the first week of June 2009 Barbara had spent 45 minutes using the Internet to access her football club's website. In the first week of June 2009 Rupinder had spent two hours and David five hours using the Internet for non-business purposes.

The company conducted investigatory meetings. John admitted disclosing the password to Barbara. Barbara admitted receiving and using the password for personal use. She said that she only disclosed the password to Rupinder as she was afraid that otherwise he would report her for her private use of the Internet. Rupinder admitted that he had received the password from Barbara, but he denied that he would have reported her otherwise. He admitted that he had used the Internet for personal purposes and he apologised. At first David denied that he had done anything wrong. He suggested that there had been a mistake. He alleged that the misuse had been undertaken by Priah, not by him. However, David later admitted his misuse. He apologised for his use of the Internet and for his initial denial of it.

Following the investigatory meetings the company made the following decisions. John was issued with a final written warning. Barbara and Rupinder were issued with final written warnings and a freeze on their pay for two years. David was dismissed.

David had worked for the company for 20 years. He was distressed at the prospect of being dismissed and of the financial hardship that it would cause him. He asked the company to make a payment in lieu of notice to mitigate the hardship that he would suffer. As a gesture of goodwill the company agreed. It made a payment of 12 weeks wages at David's net wages of £400 per week. David's dismissal took effect on 15 June 2009.

A few days later, David learned that some weeks earlier the company had contracted to buy four new replacement computers. The new computers would enable the work previously done by five computer operators to be carried out by four computer operators.

On 14 September 2009, David hand delivered a claim form to the Birmingham Employment Tribunal Office. In his claim he contended that:

- (a) The real reason for his dismissal was redundancy.
- (b) He should have been given a statutory redundancy payment, having worked for the company from 1 June 1989 and his date of birth being 11 October 1966.
- (c) His selection for dismissal as redundant was unfair.
- (d) If his dismissal was for computer misuse, it was unfair because the company could not have considered it to be gross misconduct because of its agreement to pay him wages in lieu of notice.

- (e) If the conduct amounted to gross misconduct, and if that was the reason for the dismissal, it was unfair because he had been dismissed while John, Barbara and Rupinder had not been dismissed. In particular, David asserted that John had caused the problem by disclosing the password, while Barbara and Rupinder had also disclosed the password and then misused the computer system.
- (f) His contract entitled him to one week's notice for each completed year of service, if the company wished to terminate his contract lawfully. As the company had only paid him 12 weeks' notice pay, there was a shortfall of 8 weeks' pay. He claimed that sum as a breach of contract of employment.

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## QUESTIONS

1. What statutory provision defines redundancy? What are the elements of redundancy? **(7 marks)**
2. Could the replacement of the five old computers with the four new computers give rise to a redundancy situation? Please set out your reasons **(2 marks)**
3. What other factors or considerations need to be taken into account if the four new computers required five computer operators carrying out work different to that which they they had been employed to do on the five old computers? **(3 marks)**
4. If the Tribunal determines that David had been dismissed by reason of redundancy, but that no question of unfair dismissal arose, how will any statutory redundancy payment be calculated? Identify the relevant statutory provisions. There is no need to make a calculation. **(8 marks)**
5. What account should be taken of the monies paid to David in lieu of notice when calculating that statutory redundancy payment?. Provide your reasons and identify any relevant statutory provisions. **(5 marks)**
6. What account should be taken of the recoupment regulations in respect of that statutory redundancy payment? Provide your reasons and identify any relevant statutory provisions. **(5 marks)**
7. In what circumstances can selection for dismissal by reason of redundancy lead to a finding of unfair dismissal? Please identify the relevant statutory provisions. Please explain what would be taken into account in deciding whether the dismissal was unfair. **(11 marks)**

8. If the Tribunal determines that David was unfairly selected for dismissal by reason of redundancy, what remedy or remedies would be available? Please identify the relevant statutory provisions. **(4 marks)**
  
9. If the Tribunal determines that David was unfairly dismissed, how would the basic award be calculated? What matters should be taken into account when calculating the compensatory award? Identify the relevant statutory provisions. Do not calculate the actual awards. **(17 marks)**
  
10. What, if any, effect does the agreement by the company to make the payment of 12 weeks' wages in lieu of notice have upon its case that David was dismissed for gross misconduct? **(4 marks)**
  
11. In the context of unfair dismissal, what is the relevance of David's contention that he was treated differently compared with the treatment of John, Barbara and Rupinder? Please describe any relevant statutory provisions. **(5 marks)**
  
12. Given that David was paid 12 weeks' wages in lieu of notice, and that his contract entitled him to one week's notice for every completed year of service, is he entitled to any further payment in the circumstances described? If so what? Please identify any relevant statutory provision. **(5 marks)**
  
13. For the purpose of this question, assume the following changes to the original scenario above:

Instead of hand delivering the claim form to the Birmingham Employment Tribunal Office, David sent his form by post to the Glasgow Employment Tribunal Office in Glasgow. He did so because he had misread his employment contract and he had mistaken the address of one of the company's factories in Scotland for the address of the company's registered office which was in London. The claim form reached the Glasgow Employment Tribunal Office on 15 September 2009. The Regional Secretary wrote to David to explain that the Glasgow Employment Tribunal Office did not appear to be the relevant office to deal with the claim. David now requests that the claim be transferred from the Glasgow Employment Tribunal Office to the Birmingham Employment Tribunal Office.

Please identify the rules and regulations that you will apply and describe what will be taken into account by the Tribunal or Employment Judge when when determining that request? **(8 marks)**

14. For the purpose of this question, assume that the original scenario above applies. David hand delivered the claim form to the Birmingham Employment Tribunal Office on 14 September 2009. The Tribunal copied and served the claim form on the respondent company that day. It gave notice that any response must reach that office by 12 October 2009. The respondent company failed to send any response at all. The case file is referred to an Employment Judge on 13 October 2009.

Referring to the relevant Rules, please identify what action is required of the Employment Judge and why? **(6 marks)**

15. Further to question 14, the respondent company sent the response form but it did not reach the office until 13 October 2009. The file is referred to an Employment Judge that day.

Referring to the relevant Rules, please identify what action is required of the Employment Judge and why? **(10 marks)**

**END OF TEST**