EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4123304/2018

Held in Glasgow on 12, 13, 14 and 15 November 2019

Employment Judge L Wiseman

Mr William Munro	**Claimant** **Represented by:** **Mr S Miller - Solicitor**
Barrhead Travel 2007 Ltd	**Respondent** **Represented by:** **Ms A Stobart - Counsel**

JUDGMENT OF THE EMPLOMENT TRIBUNAL

The judgment of the tribunal is:-

(i) the claimant was unfairly dismissed by the respondent;

(ii) it was not practicable, in terms of sections 116(1) and (3) of the Employment Rights Act, to order reinstatement or re-engagement;

(iii) the award of compensation is reduced to nil; and

(iv) the respondent shall pay to the claimant the sum of £2754 (net) in respect of the balance of the payment of notice.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 23 November 2018 alleging he had been unfairly dismissed and that his full entitlement to notice had not been paid.

2. The respondent entered a response admitting the claimant had been dismissed for reasons of redundancy or some other substantial reason, but denying the dismissal was unfair.

3. I heard evidence from Mr Jonathan Knapp, Mergers and Acquisitions team; Mr Ninan Chacko, Chief Executive Officer of Travel Leaders Group; Mr J. D. O'Hara, senior partner at Certares (a private equity company) and from the claimant. I was also referred to a jointly produced folder of documents. I, on the basis of the evidence before me, made the following material findings of fact.

Findings of fact

4. The claimant is the Founder of the respondent company, which he started in 1975 and developed into a large successful company.

5. The claimant suffered a health scare in 2007 and at that time, he stepped back to become a minority shareholder with his daughter, Sharon Munro, being the majority shareholder and Chief Executive of the company. The claimant was described at this time as being the Chairman and Founder of the company.

6. The claimant and his daughter were approached by Travel Leaders Group (TLG), an American company, in 2017, to sell the respondent company. The claimant and his daughter agreed.

7. TLG understood from the claimant and Ms Munro that the claimant had started to step away from the day-to-day running of the business and that he would continue to do so. TLG further understood the claimant would not be playing a role in Barrhead Travel going forward, and accordingly agreed to "add back" the cost of the claimant's salary (£161,000 at the time of the sale) multiplied by 6.5, to the sale price. The sale was finalised on 6 February 2018.

8. Ms Sharon Munro remained as the Chief Operating Officer following the sale of the business to TLG. Ms Munro remained in post until Autumn 2018, when she retired from the business.

9. The claimant was offered and accepted an Employment Contract (page 54). The claimant was employed by the respondent and his role was Chairman and Founder of Barrhead Travel. The claimant was required to report to Mr Chacko, Chief Executive Officer of TLG, or his designate.

10. The claimant and the senior representatives from TLG had many meetings and discussions prior to, and following, the sale of the respondent, regarding the claimant's role. TLG valued the claimant's knowledge and experience and contacts, and they wanted to utilise him on "special projects" (that is, opportunities for growth) which the claimant was keen to develop. The key issue for TLG was that they did not want the claimant to involve himself in Barrhead Travel work, or utilise the staff or resources of Barrhead Travel to further his special projects.

11. The claimant was not expected to work full time or a set number of hours. Clause 4 of the Contract provided that he was to be paid £67 per hour for any work carried out other than on special projects. The Contract did not specify a maximum salary, but it was anticipated that no more than £25,000 per annum would be paid to the claimant as a salary. The Contract also provided for commission to be paid when the special projects came to fruition.

12. The claimant emailed Mr Chacko on the 19 February 2018 (page 147) with a note of the hours he had been working. The claimant, in that email, set out his normal daily routine which involved arriving at work at 10/10.30am and working until 5pm and attending dinners in the evening when required. The claimant further described that his day involved "troubleshooting, looking for improvements within branches and talking to staff." He also spent approximately 4 hours per day on marketing, and considering shop décor, researching new locations and interviewing for senior appointments.

13. The claimant's report (pages 147a and 147b) detailed his hours and activities for Wednesday 7 February until Friday 16 February. The claimant averaged 7 hours per day.

14. Mr Chacko was alarmed when he read the claimant's email because the number of hours far exceeded what had been expected and focused almost

entirely on Barrhead Travel activities. Mr Chacko considered there had been a misunderstanding by the claimant of his role going forward.

15. Mr Chacko spoke with Mr Knapp to understand whether he had expected that level of hours. Mr Knapp confirmed it was more than expected, but that it was perhaps understandable the claimant would, in the immediate period following the sale, continue to act as he had previously done. There was agreement between Mr Chacko and Mr Knapp that the claimant's hours would need to be governed.

16. Mr Chacko responded to the claimant by email of the 19 February (page 153). The email agreed the claimant's hours and sought details of the claimant's activities regarding the special projects.

17. Mr Knapp wrote to the claimant by email of the 5 March (page 184). The content of the email had been approved by Mr Chacko. The letter referred to the fact the sale price had been adjusted by virtue of the fact the claimant's salary had been added back, and this had been a reflection of the claimant's stated desire to take more personal time away from the business, and of the fact many of his duties had been absorbed by others. The letter went on to say the report of hours provided by the claimant had exceeded TLG's expectations and involved activities which should be carried out by others. The letter concluded by stating the expectation was that the claimant would focus on the special projects identified.

18. The claimant replied to Mr Knapp by email of the 5 March (page 182). The claimant referred to working 37.5 hours per week for six months of the year. He noted that it would be sensible to work towards reducing his hours further as time progressed, but *"in order for [me] to function in a manner that is productive for the future of Barrhead Travel I do need to be in the office a fair amount of time as it is such a fast moving business and one could very easily lose touch and be of no benefit going forward. At the moment there is no-one else who can do what I do …"*

19. Mr Knapp responded (page 182) to say that further discussion with Mr Chacko was required because there had not been any mention of working for six

months, and if this had been discussed then only 50% of his salary would have been added back to the sale price.

20. Mr Chacko had been copied into the correspondence and he considered the email from the claimant (page 182) disclosed the problem, which was that notwithstanding the claimant understood what was being asked of him, he still wanted to focus on Barrhead Travel and "troubleshoot" (that is, attend to anything he considered needed done).

21. Mr Knapp informed Mr Chacko (page 190) that he had contacted BDO and received confirmation that they had been "explicitly clear" with the claimant regarding the effect of salary being added back in to the sale price. Mr Knapp considered the claimant was trying to benefit from the increased sale price and also achieve a salary post-sale.

22. Mr Knapp emailed the claimant on the 7 March (page 199) to say working for six months had not ever been discussed. Mr Knapp referred to the fact the claimant's salary had been added back into the sale price. Mr Knapp set out three options:

- reverting to a salaried position at the budgeted cost of £20,000 per annum and take the emphasis away from hours;
- limit the amount of hours the claimant works to meet the budgeted constraints or
- allow the claimant 50% of full salary or hourly wage with no cap on hours and recapture £500,000 of purchase price from the sellers.

23. The claimant emailed Mr Chacko on the 13 March (page 213) regarding the *"misunderstanding over my future role"*. The claimant reiterated his focus was to be on the special projects but noted that he also *"filled in the gaps which regularly appear when someone leaves an important role or more resource is required as a result of expansion plans or with a new project to get it off the ground … it takes time to recruit for new positions and train."* The claimant confirmed his preference to work for £67 per hour up to a maximum of £25,000 per annum.

24. Mr Chacko considered a pattern was appearing of the claimant indicating agreement to what was proposed but then doing what he wanted to do. Mr Chacko's main concern was to ensure the claimant's activities did not interfere with Ms Munro's ability to run the business and be accountable for it. Mr Chacko was receiving feedback from Ms Munro and Ms Dobson, Managing Director, that the claimant's activities were having an impact on the business.

25. Mr Andrew Winterton was appointed by TLG in January 2018 as Global Head of Supply Relationships. Mr Winterton lived in the UK and because of this assumed a role in over-seeing the UK businesses (of which there were 5) purchased by TLG.

26. Mr Chacko, Mr Knapp and Mr Winterton held ongoing discussions during March and April regarding the claimant's role. It was accepted the claimant had value to offer TLG because of his experience, and the discussions were focussed on where best the claimant could be used. All ideas for the claimant were focussed on activities outside Barrhead Travel.

27. Mr Chacko emailed the claimant on the 22 March (page 260) stating he greatly valued the claimant's superlative retail experience, knowledge, insight and industry network and that he had every desire to continue to rely on this appropriately. Mr Chacko confirmed he had spent time reflecting on the situation and that he had come to a conclusion regarding how the claimant could provide the most benefit across the TLG UK businesses (and not just for the existing Barrhead business).

28. Mr Chacko confirmed he was keen, with regard to the Barrhead business, to assess how capable Ms Munro and her team were at managing the business, especially without the claimant's direct oversight, involvement and assistance. Mr Chacko went on to explain that having the claimant's role focused outside of Barrhead would force Ms Munro and her team to mature their own management competency. Mr Chacko suggested the claimant worked directly from home and retire any operating Barrhead titles in order to reinforce the separation. He confirmed he would also convey this to Ms Munro.

29. Mr Chacko confirmed a budget of £25,000 would be put in place to cover the claimant's time for agreed activities outwith the special projects.

30. Mr Chacko was pleased to receive a positive response from the claimant and felt they were making progress. However, the claimant did not then act in accordance with the agreement.

31. Mr Chacko emailed the claimant on the 2 May (page 263a) in direct terms. He confirmed that, consistent with their discussions, he wanted the claimant's focus to be expressly on projects beyond Barrhead, that either Andrew Winterton or Mr Chacko approve in writing. He wanted the claimant's monthly efforts to remain within the budgeted limit of 25 hours worked per month at an hourly rate of £67 per hour gross. He also asked the claimant to relinquish his office at Barrhead headquarters because it was no longer needed.

32. Mr Chacko asked the claimant to sign and return a copy of the letter, which the claimant duly did on the 8 May (page 264).

33. Mr Chacko received an email from Mr Winterton on the 15 May (page 265) stating he had had a *"fairly non-productive conversation with Bill regarding his future role within TLG in the UK".* Mr Winterton confirmed he had explained to the claimant that TLG saw Ms Munro as the potential General Manager of all the UK assets going forward, but that they wanted to see her perform through a complete budget cycle to ensure this was the right move. TLG needed her to be solely responsible and this meant they did not want the claimant to be involved in the business of running Barrhead.

34. Mr Winterton reported that the claimant had set out his view of the business that TLG were making a big mistake not using him and his experience because he had the "midas touch" when it came to their property strategy. The claimant also said that the current contract did not leave him with enough time to contribute in the way he wanted: he was driving Barrhead to grow in the luxury sector and had identified a suitable candidate.

35. Mr Winterton confirmed he had explained to the claimant that TLG saw a role for him as a figurehead for TLG in the UK and he detailed what this involved.

The claimant had not engaged with this other than to say it was not sufficiently specific.

36. Mr Winterton concluded the claimant did not want to stop being intimately involved at Barrhead and had little real interest in a broader TLG role.

37. Mr Chacko forwarded the email to the claimant on the 15 May (page 265) and set out three bullet points for the claimant: *"* I need Sharon to run Barrhead solely; * I would like you to only focus on the non-Barrhead UK initiatives that Andrew discussed with you and * I do need you to unambiguously step back and away from Barrhead."* Mr Chacko asked to discuss this with the claimant.

38. The claimant's PA Mr Crabbe responded by email dated 17 May (page 267). The email set out the claimant's response. The email noted it had never been the claimant's intention to work full time in the business (Barrhead Travel) but to work up to a maximum of 6 months a year on a reducing basis whilst being asked by the senior management of Barrhead Travel for his continuing input on property and luxury matters while taking on more of an ambassadorial role. The claimant was extremely passionate as to why he believed he should continue to be involved in property and luxury decision within Barrhead Travel. He agreed it would be in the best interests of Barrhead for him to start to pass on his knowledge and expertise but where he disagreed was in his belief that this couldn't simply happen overnight. The email confirmed the claimant would be interested in pursuing a role within TLG and that he was expecting a formal offer of his new role going forward.

39. The claimant also sent an email to Mr Chacko on the 22 May (page 271). The claimant, in that email, noted he understood it was important for Ms Munro and her team to be evaluated by TLG, and that it had never been his intention to get involved in the day to day running of Barrhead Travel, and he believed he had not done so. The claimant hoped Mr Chacko would understand that it was very difficult for him psychologically to walk away from a business he had poured his heart and soul into for 43 years. The claimant confirmed he would be "extremely honoured" to carry out the ambassadorial role for TLG.

40. TLG's solicitor in the UK emailed the claimant on the 23 May (page 273) attaching a contract of employment for his consideration. The Contract (page 75) was between TLG UK Ltd and the claimant. The Schedule to the contract (page 85) set out that the job title would be Non Executive Chairman of Travel Leaders Group UK Ltd. The responsibilities were to be projects as directed by Mr Winterton from time to time, including but not limited to the two special projects the claimant had been working on and attendance at industry events. The claimant was to work from home or London. The commencement date was 1 June 2018, and no period of continuous service was to be recognised. The working hours were 25 per month, with remuneration being £67 per hour gross, up to a maximum of £1675 gross per month. There was also a clause detailing the arrangements regarding commission.

41. The claimant responded to Mr Winterton (copied to Mr Chacko) by email of the 25 May (page 273a). The claimant said he had *"quite a lump in my throat"* when he read the clause noting there would be no period of continuous employment. He felt he was being asked to effectively forego the last 43 years of continuous service in exchange for a fresh start under the new arrangement. The claimant asked for time to think about the offer.

42. Mr Chacko had no issue with giving the claimant time to think about the offer. The claimant was asked to give his response by the 15 June.

43. The claimant was put in touch with Mr Henry Gilroy to use as a resource regarding the special projects. Mr Chacko was aware the claimant and Mr Gilroy spoke several times but nothing was taken forward.

44. Mr Chacko did, on the 30 May, email Mr J D O'Hara (additional folder of documents page 45) to say that he thought this was *"headed for an outcome where we part ways"*. Mr Chacko had reached that view because of the length of time the claimant was taking to think about the contract. Mr Chacko had expected someone interested in accepting the contract to come back to negotiate on terms (in this case he expected the claimant to come back and ask for continuity of service to be included in the contract or bought out).

45. The claimant had a number of questions regarding the contract and was advised to contact Mr Gabbie, TLG's legal representative in the UK. The claimant did this on the 13 June and Mr Gabbie provided the responses by return (page 289). None of the claimant's questions involved the issue of continuity of service.

46. Mr Gabbie received an emailed letter from the claimant's legal representative on the 15 June (page 329). The letter complained of "unreasonable demands" made of the claimant and suggested undertones of "age discrimination and harassment". The letter confirmed the claimant did not agree to the terms recently presented to him and confirmed he would continue to work under his current terms and conditions and would be returning to his office within Barrhead Travel headquarters and engaging with colleagues as appropriate to perform his duties.

47. Mr Chacko did not consider the claimant's position was about money: he considered it was a case of the claimant being the Founder of the respondent business and being unable to separate from the business he had created. TLG would have been prepared to pay the claimant severance for his service, so there was a clean break, but the claimant at no time asked for this.

48. Mr Chacko had, since approximately mid-May been giving consideration to whether Barrhead Travel needed a Chairman. The respondent was now one of a number of subsidiaries under the governance of a larger business and none of those subsidiaries needed a Chairman. Mr Chacko considered there had never in fact been a need for a Chairman even though the claimant had held that title.

49. Mr Chacko discussed his thoughts with Mr Knapp and Mr Winterton and asked Mr Knapp to send him through all of the emails concerning the sale and discussions with the claimant which had been committed to writing. Mr Chacko considered the options were to continue with the claimant in the post; or delete the post subject to consultation with the claimant. Mr Chacko decided on the latter course of action.

50. A letter dated 25 June 2018 (page 109) was sent to the claimant. The letter was from Mr Knapp but was based on Mr Chacko's preliminary view there was no longer a need for a Chairman. The letter informed the claimant that *"following a structural review into the operations of Travel Leaders Group UK Limited … we believe there is no longer a need for a dedicated Chairman of Barrhead Travel 2007 Ltd. While Barrhead exists as a separate legal entity for tax purposes, we view Barrhead as an operating division within TLG UK's broader organisation."* The letter went on to say that the intended business reorganisation may result in the role of Chairman of Barrhead becoming redundant. The claimant would be informed during the consultation process if there were any alternative roles they would be able to offer him in order to avoid making him redundant. Mr Knapp confirmed he would like to meet with the claimant to hear his thoughts on the provisional identification of his role being redundant before a final decision was made.

51. Mr Knapp met with the claimant on the 10 July. Mr Knapp was accompanied by Ms Christy Richardson who took notes of the meeting (page 111) and the claimant was accompanied by Mr Crabbe, who also took notes (page 116). The claimant, at that meeting, expressed his desire to join TLG because he wanted to work and had lots of ideas which would be beneficial to TLG. Mr Knapp confirmed he would take this back to Mr Chacko.

52. Mr Chacko received a copy of Ms Richardson's notes following the consultation meeting on the 10 July. Mr Chacko did not consider the claimant had raised any points to change his provisional view that there was no need for the post of Chairman.

53. A letter dated 17 July (page 120) was sent from Mr Knapp to the claimant confirming the claimant's position as Chairman at Barrhead Travel was redundant. The claimant's employment ended on the 17 July 2018. The claimant was paid a redundancy payment of £15,240. The letter went on to say that if any of the special projects came to fruition not only for Barrhead but for the wider TLG, they would be content to pay him commission as per the terms of the contract. The letter also mentioned going forward on a self-employed consultancy basis.

54. The claimant received a Consultancy Agreement on the 1 August 2018 (page 87) offering him the opportunity to work on a self-employed basis on the special projects and to earn fees (£67 gross per hour to a maximum of £1675 gross per month) and commission from them on the same basis as previously. The claimant did not accept this offer.

55. The claimant appealed against the decision to terminate his contract of employment. The claimant emailed Mr J D O'Hara on the 20 July (page 123) stating he wished to appeal on the basis that he could not understand how a position created in February could be redundant in May. The claimant sent a further document (page 125) setting out a number of points for Mr O'Hara to consider.

56. The appeal hearing took place on the 5 September and the notes of the hearing were produced on page 130. The claimant argued that as he was on a zero hours contract, there was no need to make him redundant. The claimant complained about being asked to work from home: he felt this had been unreasonable because he found it impossible to continue with the special projects when at home. The claimant argued he still had something to contribute to Barrhead and to TLG, and it was important for him to retain a connection to Barrhead as a figurehead. Mr O'Hara confirmed he would endeavour to resolve the sticking points (for example, the claimant's period of continuous service) and find a way forward to suit both parties.

57. Mr O'Hara spoke with Mr Chacko and Mr Winterton following the appeal hearing. He learned there had already been attempts to repair the situation by offering a contract with TLG or a Consultancy Agreement. The claimant had refused both of those offers. Mr Chacko also referred to the claimant having been disruptive. Mr O'Hara accepted what he had been told and decided to reject the appeal.

58. Mr O'Hara was not aware of the fact that recognition of continuity of employment was important for the claimant because it gave him employment protection. Mr O'Hara wanted to recognise the claimant's service because this would provide him with a severance payment. Mr O'Hara was going to

recommend the claimant's continuity of employment be recognised, but did not do so upon learning the claimant had been paid a redundancy payment based on service.

59. Mr O'Hara wrote to the claimant on the 20 September (page 134) to confirm his decision to uphold the decision to make the claimant's position redundant. Mr O'Hara referred to the fact TLG had offered the claimant an opportunity to continue working on the special projects on a consultancy basis.

60. Mr Chacko did not consider reinstatement was an option for the claimant because his role no longer existed. The claimant's previous actings had been disruptive and detrimental to the business (for example the claimant's continued involvement in Barrhead Travel and use of its staff and resources and he had attended at shops to use the photocopier and had had to be asked to leave by security). TLG had paid for the whole Barrhead business with a management team, and the claimant's reinstatement would be at odds with the ability of the management team to be successful.

61. Mr O'Hara also confirmed he considered reinstatement to be not practicable. He thought matters had "gone too far"; relationships had been damaged and the claimant's return would cause financial risk to the company.

62. The claimant has not, since dismissal, been working. The claimant has received numerous offers of employment/work but has had to refuse these because he is subject to restrictive covenants.

63. The parties agreed the claimant had been paid four weeks' notice in circumstances where he should have been paid 12 weeks' notice. The respondent agreed to pay to the claimant the sum of £2754 net in respect of the balance of notice pay.

Credibility and notes on the evidence

64. I found the respondent's witnesses to be both credible and reliable. Mr Knapp is a "money man" and his focus was on the financial aspects of all transactions and discussions. He very clearly held the view that because the claimant's salary had been added-back, it must have been clear to the claimant that he

would not have an ongoing role in Barrhead Travel going forward. Mr Knapp was used by Mr Chacko to lead some of the discussions with the claimant (for example, the consultation meeting) because he had had the most contact with the claimant during the sale discussions. There was, however, no dispute regarding the fact that during the consultation process and the letter regarding termination of employment, Mr Knapp was conveying decisions taken by Mr Chacko and Mr Winterton.

65. Mr Chacko was an impressive witness who gave his evidence in a straightforward and honest manner. He, on the one hand, completely appreciated the claimant's difficulty and reluctance in stepping away from the business he had founded: however, on the other hand he needed the claimant to remove himself from the day to day running of Barrhead Travel. Mr Chacko's opinion that the claimant tended to indicate an understanding of what was being asked of him, only to continue to involve himself in Barrhead Travel business, was supported by the letters and emails sent to, and received from, the claimant.

66. I accepted Mr Chacko's evidence that he had wanted to maintain a relationship with the claimant, and to utilise the claimant's knowledge, contacts and experience for the benefit of TLG UK Ltd. Mr Chacko acknowledged the TLG contract offered to the claimant had not included continuity of service: this had been a deliberate move to emphasise the separation from Barrhead Travel. Mr Chacko had expected the claimant to negotiate regarding this term and to either ask for service to be included, or for it to be bought out. The claimant did not do so and, in fact, at no time indicated he would accept the contract if service was included.

67. Mr O'Hara was also a credible witness and it was clear he had approached the appeal hearing with the focus being on trying to resolve matters and "respect [the claimant's] legacy in the business". There were however two aspects of his evidence which became confused. The first aspect related to the issue of continuity of service. Mr O'Hara wanted to recommend the claimant's continuity of service be honoured. There was some confusion regarding whether this meant honoured in the TLG contract or honoured for

the purposes of a severance payment. Mr O'Hara stated, in cross examination, that he thought the significance of the service related to a severance payment. He then spoke of recommending to the management team that the TLG contract be re-issued with continuity of service. In re-examination Mr O'Hara confirmed he saw employment protection in terms of money, and he further confirmed he had wanted to re-issue the TLG contract with continuity of service, but was informed that there was no desire to reissue the contract on that basis, and that the years of service had been paid as a redundancy payment.

68. There is no doubt Mr O'Hara's evidence was confused. I, having had regard to the notes of evidence, concluded Mr O'Hara's concern was that service should be honoured because by doing so, the claimant "would be paid for it". Mr O'Hara only understood, after discussing the appeal with Mr Chacko, that the claimant had received a redundancy payment based on his continuous service. This was the reason Mr O'Hara's intended recommendation did not proceed: it was no longer required in circumstances where the claimant's service had been recognised for the purposes of calculating a redundancy payment.

69. The second point of confusion in Mr O'Hara's evidence related to his letter confirming the outcome of the appeal hearing. In that letter Mr O'Hara referred to his remit being to decide whether there was a continuing need in the business for "an Executive Chairman role". Mr O'Hara, in the following paragraph, referred to the claimant agreeing there was no need for an Executive Chairman role. Mr O'Hara, when questioned about this reference to an Executive Chairman role, explained it must have been an error and should have said "Non Executive Chairman.

70. I deal with this point in more detail below because one of Mr Miller's submissions was that the claimant was dismissed from a role (Executive Chairman) which he did not hold. I noted various terms were used during the course of the hearing to describe the role, for example ambassadorial or non-operational but I could not however accept there was any confusion either on the part of the respondent's witnesses, or on the part of the claimant,

regarding the fact the claimant's role was non-operational. I was entirely satisfied all parties knew and accepted the claimant did not have an operational role in Barrhead Travel. I was not persuaded that terminology used in the letter confirming the outcome of the appeal changed that position.

71. The respondent's witnesses accepted they each had little knowledge and/or understanding of UK employment law. They relied on their legal representative to provide advice as required. This lack of knowledge was evident in respect of the issue of continuity of service: none of the witnesses appeared to appreciate, at the time, that continuity of service was important to the claimant because it gave him employment protection (that is, the right to claim unfair dismissal).

72. I also found the claimant to be a credible witness, although he had a tendency not to answer the questions put to him, but to explain, in great detail, various aspects of the business. The claimant thought he was doing what had been asked of him in terms of stepping back from the business: however, the evidence (documentary and from the respondent's witnesses) demonstrated the claimant wanted to, and did, continue to use Barrhead Travel staff and resources as he saw fit. The claimant, in reality, could not see how he could fulfil a role without using Barrhead Travel resources. The claimant, for example, took umbrage at being asked to work from home; and he told the tribunal that he was unable to progress the special projects if working from home because he needed his licence. In fact, the claimant had to admit that he did not hold a personal licence, and the reference to this was to the licence held by Barrhead Travel.

73. I considered it clear from the claimant's evidence that he did not want to relinquish involvement with Barrhead Travel. I say this because it was clear that even in relation to the special projects, the claimant wanted to work in and from a Barrhead Travel office and to involve staff and resources as he saw fit, at various stages of those projects.

74. I also considered it clear from the claimant's evidence that he did not like having to deal with Mr Chacko, Mr Winterton, Mr Knapp and Mr O'Hara. He

repeatedly referred to having too many people involved and he clearly felt that one did not know what the other was doing. The claimant also formed an opinion that his employment may be terminated immediately following acceptance of the new TLG contract, and he believed continuity of employment had deliberately been excluded from the TLG contract, in order to achieve this.

75. The claimant told the tribunal that he wanted to work and the offer of the TLG contract was "the perfect job" for him. I accepted that evidence, but found it difficult to reconcile with the fact the claimant did not enter into negotiations regarding that contract or attempt to agree terms which would have made the contract acceptable.

Respondent's submissions

76. Ms Stobart noted this was a case of unfair dismissal in terms of section 98 Employment Rights Act 1996, where the respondent asserted they had dismissed the claimant for a fair reason, namely redundancy or some other substantial reason (being a business reorganisation). The respondent invited the tribunal to find that in dismissing the claimant they acted reasonably in all the circumstances.

77. Ms Stobart set out the findings of fact she invited the tribunal to make. These findings included that as part of the acquisition process the claimant told the respondent that he would not be carrying out day to day duties going forward, and on that basis it was agreed the claimant's salary would be added back to increase the value of the sale by approximately £1 million. Ms Stobart submitted this fact was relevant because it went to the reasonableness of what the respondent was trying to achieve.

78. Ms Stobart also invited the tribunal to find that the intention of Mr Chacko and Mr Winterton was to integrate the Barrhead business into TLG as quickly as possible and they wanted to ensure that the new management team (namely Ms Munro and Ms Dobson) had full autonomy. The respondent sought to confine the claimant's activities to special projects outwith Barrhead Travel,

but the claimant continued to "troubleshoot" in the Barrhead business, attend the office and undertake tasks which he felt needed done.

79. The respondent valued the claimant's experience and was keen to harness that experience for the good of TLG in terms of new business ideas beyond Barrhead Travel and an ambassadorial function for TLG. The respondent did not think Barrhead Travel needed a dedicated Chairman (ambassadorial or operational) but felt that the claimant could add value if he was to operate on behalf of TLG as a group.

80. Mr Winterton, Mr Knapp and Mr Chacko discussed how the claimant could add value to the TLG UK Ltd companies. They were intending to integrate all the new companies under the TLG banner and Mr Chacko gave evidence that he thought the claimant could help in integrating the businesses and that the special projects he was working on could apply to all TLG UK Ltd businesses. Ms Stobart submitted that Mr Chacko was, in good faith, proposing the claimant should work for TLG.

81. Ms Stobart referred the tribunal to the email at page 263a where Mr Chacko wrote to the claimant in clear terms, which the claimant appeared to accept. However, it subsequently became clear again that the claimant was not prepared to step away from Barrhead Travel. Mr Chacko accordingly authorised his lawyer to send the claimant a new contract for the role of Chairman of TLG UK Ltd. The contract was for an entirely different role, with a wider remit across TLG and not limited to Barrhead. There was a payment clause and a commission clause, offering the claimant the chance to earn significantly higher payments. The claimant was not offered continuity of service because it was important for the respondent to create a clear separation in the claimant's mind that this was a brand new role.

82. The claimant, in his evidence, said he did not trust the respondent not to sack him the next day. The claimant did not engage in negotiation on the contract, nor did he indicate that had he been offered continuity of service he would have accepted the role. Ms Stobart submitted that by this time it was clear to Mr Chacko that the claimant was not prepared to relinquish his office or

restrict his access to Barrhead's premises or personnel, in any role. The claimant saw working at home as a barrier to being able to fulfil any duties as Chairman of TLG and undertaking special projects. Ms Stobart referred to the claimant's evidence regarding not having a licence if he worked at home. The claimant, when pressed, subsequently accepted the licence was not a personal licence, but that of the respondent. Ms Stobart submitted the claimant had given no real rational explanation why he could not work from home; and she suggested the real reason the claimant had not wanted to work from home was because he wanted to involve himself in Barrhead Travel as he saw fit.

83. Mr Chacko and Mr Winterton reached a preliminary view, in May 2018, that what was needed was an ambassadorial Chairman at TLG UK Ltd level to integrate the businesses and work on new business for the group as a whole. There was no longer a need for a Chairman role attached solely to one subsidiary, namely Barrhead Travel. Ms Stobart submitted the claimant agreed there was no requirement for a Chairman at Barrhead Travel.

84. Ms Stobart referred to the consultation process and submitted the respondent had considered the points raised by the claimant, but concluded none of those points changed the fact there was no need for a Chairman role at Barrhead Travel. The claimant was offered but refused a role as Chairman of TLG UK Ltd, and he also subsequently refused the offer of a Consultancy Agreement. It was submitted that if the claimant had accepted the consultancy agreement, he would have suffered no economic harm because he had already received the full statutory redundancy payment.

85. The claimant exercised his right to appeal against the decision to dismiss him. Mr O'Hara listened to the claimant but was not persuaded the decision to make the role redundant was wrong. Mr O'Hara did say he thought the claimant's continuity of service should be honoured, and he understood that would mean the claimant would be paid his redundancy payment.

86. Ms Stobart invited the tribunal to find that even if the claimant had been offered continuity of service, he would not have accepted the TLG contract.

Ms Stobart's position was based on the fact the claimant wanted to involve himself as he saw fit in the day to day Barrhead Travel business, working from the Barrhead office and directing Barrhead personnel. This, it was submitted, was bourn out by the fact the claimant refused the Consultancy Agreement after the issue of service had been resolved by payment of a redundancy payment.

87. Ms Stobart summarised her legal submissions as follows: (a) there was a sound business reason to remove the role of Chairman of Barrhead Travel which constitutes a business reorganisation; (b) the reason for dismissal was some other substantial reason or redundancy. Ms Stobart acknowledged the respondent had put forward both reasons, and submitted the case was better pled as a business reorganisation; (c) the respondent had acted reasonably in dismissing the claimant when he refused to accept either the TLG contract or the Consultancy Agreement. (d) Ms Stobart invited the tribunal to find the dismissal fair; however, if the tribunal was not with her, she submitted it would not be practicable to reinstate the claimant and any award of compensation should be reduced because of a failure to mitigate losses, contributory conduct and the fact the claimant would have been dismissed even if a fair procedure had been followed.

88. Ms Stobart submitted the business decision to remove the role of Chairman of Barrhead Travel had evolved over time. The claimant had been appointed Chairman and Founder following the acquisition of Barrhead Travel by TLG. The respondent's expectation had been that the claimant would attend industry events and work on the special projects which had been identified. The respondent made it clear that the claimant could have access to Mr Crabbe, but should not use staff resources at Barrhead Travel, unless expressly approved, to further the special projects. There was an established CEO at Barrhead Travel and it caused difficulties for staff if they were being directed to do things by two different people.

89. In March Mr Chacko and Mr Winterton discussed the need for a Chairman role at TLG UK Ltd with the claimant. They thought the claimant would be able to add value and help to integrate the companies operating under the TLG

banner in the UK. The claimant was offered a new contract for this new role. He refused it in no uncertain terms.

90. Mr Chacko and Mr Winterton took the decision they did not need the role of Chairman of Barrhead going forward as there was no need for it in the integrated structure. The TLG UK business including Barrhead Travel was operated by Mr Chacko and Mr Winterton and they did not consider that any single subsidiary needed a Chairman, ambassadorial or functional.

91. Ms Stobart submitted this was a legitimate and rational business decision that led to the removal of the role of Chairman of Barrhead. The business reorganisation was "some other substantial reason" and this was the reason for the claimant's dismissal. The respondent does not need to show that a reorganisation was essential merely that there was a sound, good business reason for reorganisation. It is a low hurdle.

92. The tribunal must next consider the reasonableness of the change and of the dismissal. This involves considering whether in all the circumstances, the employer acted reasonably in treating the business reason as a sufficient reason to dismiss.

93. Ms Stobart submitted the respondent acted reasonably in offering the claimant a new role, when they were under no obligation to do so. It has been recognised the respondent could simply have chosen not to authorise any hours for the claimant, but they did not want to act in this way. It was submitted the respondent acted in good faith and offered the claimant an enhanced role with TLG.

94. The disadvantage to the claimant was that the new contract contained no continuity of employment. Ms Stobart submitted the prejudice to the claimant was minimal given he had no right to any hours in the contract. The claimant was on a zero hours contract and so the idea that he had employment to protect cannot have been a serious factor when weighing up what he had to gain by the new contract which the claimant described as being "perfect" for him. Money was not the issue in this case. Mr Chacko thought it was

reasonable to offer the claimant a new contract with a fresh start date in order to make a clean break from Barrhead Travel.

95. Ms Stobart submitted the respondent acted reasonably in consulting with the claimant to understand whether the decision to remove the Barrhead role was the correct one and to give him an opportunity to put his point of view. The claimant did raise the issue of continuity again but did not say he would accept the role if this was resolved. Mr Chacko did not believe the real reason the claimant had not signed the contract was because of a lack of continuity of employment. The claimant did not raise this issue in the list of questions he put to Mr Gabbie. The claimant did not seek to negotiate on the terms of the contract: instead he instructed his lawyer to refuse the offer because he considered it a wholesale change and tantamount to harassment and discrimination. Mr Chacko believed the sticking point with the contract was the unambiguous separation from Barrhead Travel.

96. Ms Stobart submitted the respondent acted reasonably by agreeing to pay the claimant his redundancy payment and notice, and by offering the claimant a consultancy agreement on the same terms as the TLG UK contract. The claimant did not stand to lose out in any way by the dismissal and in fact stood to gain had he accepted the consultancy agreement

97. Ms Stobart acknowledged Mr O'Hara had, when giving his evidence, said he would have recommended to "grandfather" the claimant's continuity of service in his contract. Mr O'Hara was not aware at that time that the claimant had been paid a redundancy payment based on his continuity of service. Mr O'Hara's evidence was mixed but his focus was on ensuring the claimant did not lose out financially by having his service recognised.

98. Ms Stobart submitted the decision to dismiss the claimant as a result of the business reorganisation was a reasonable one and fell within the range of reasonable responses open to the employer.

99. Ms Stobart referred to section 139 Employment Rights Act and submitted the respondent no longer believed they needed a Chairman at a subsidiary level, namely Barrhead Travel. In those circumstances, given that the requirement

for work of a particular kind was expected to cease, the dismissal was wholly or mainly attributable to that reason. The claimant himself accepted during the consultation that there was no need for a Chairman at Barrhead Travel. Ms Stobart referred to her earlier submissions regarding the reasonableness of the alternative employment offered to the claimant. It was submitted the dismissal for this reason was fair.

100. Ms Stobart submitted that should the tribunal find the dismissal unfair, then reinstatement should not be ordered because it would not be practicable for the respondent to comply. There was no role for the claimant to fill, and the claimant's return to the Barrhead Travel business would lead to disruption and difficulties for the business and was likely to harm it from an economic point of view. Ms Dobson, the CEO, had informed Mr Chacko and Mr O'Hara that having the claimant back in the business would be difficult. Further, the relationship between the TLG management and the claimant had been irreparably damaged because the TLG management no longer had faith in the claimant. The claimant's actions during and post employment had undermined trust and confidence, and his habit of agreeing to a proposal but then going back on it meant the respondent could not have faith in him to hold himself out as an ambassador of the company.

101. Ms Stobart further submitted that should an award of compensation be made, it should be reduced because the claimant had failed to mitigate his losses. The claimant could have accepted the Consultancy Agreement. An award of compensation should also be reduced because of ***Polkey*** and contributory conduct. Ms Stobart referred to page 49 of the productions where three points were set out regarding the basis of a reduction for contributory conduct.

Claimant's submissions

102. Mr Miller referred to section 139 Employment Rights Act and the definition of redundancy at section 139(b)(i) which provides that *"an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to … the fact that the requirements of the business for employees to carry out work of a particular kind have*

ceased or diminished or are expected to cease or diminish." Mr Miller submitted the ambassadorial role to which the claimant had been appointed was not redundant. Further, it would have been surprising if it had been, as it had been instituted as a condition of the deal as recently as February 2018, and it had been formally amended on the 2 and 8 May, the same month that Mr Chacko and Mr Winterton reached the "preliminary" view that the role was redundant. Mr Miller invited the tribunal to have regard to Mr Knapp's evidence which made the decision sound definitive, rather than preliminary, in nature.

103. The evidence did not support that the Chairman role was operational. The role was ambassadorial. The respondent misunderstood the role it was making redundant, and these misunderstandings continued at the appeal stage. Mr Miller asked the question what, in terms of section 139 (above) was the work of a particular nature? He answered that by reference to the ambassadorial nature of the role and the ad hoc work agreed by Mr Chacko involving networking and special projects. He submitted this work had not ceased or diminished, and accordingly the redundancy case had not been made out.

104. Mr Chacko and Mr Winterton were planning to remove the role which they wrongly thought the claimant held even prior to the changes to the contract taking hold.

105. Mr Miller submitted the outcome of dismissal was predetermined, and that had been admitted in evidence. In any event, it was apparent from the documents, and not disputed in evidence, that if the claimant did not accept the wider TLG role by 15 June, he was to expect to hear from the company's lawyer.

106. Mr Knapp was, it was submitted, going through the motions in the consultation over which he presided. In his ignorance of UK employment law, he thought what he had done was acceptable.

107. Mr Miller acknowledged that it was true that from time to time the claimant's managers expressed frustration with the claimant. However, that was the fault

of the organisation for not making clear his responsibilities at the outset: the contract was silent on that in contrast to the later TLG contract. The managers themselves were geographically disparate and suffered from communication and knowledge failures.

108. Mr Miller submitted that even if the claimant was blameworthy to any extent, the response to that ought to have ultimately been disciplinary action on an escalating basis. It was notable in that connection that the respondent was prepared to resort to disciplinary action in order to bring its employee into line (Mr Winterton's email of the 27 June, page 313) That was what the managing executives should have done, rather than devising a redundancy stratagem which was transparently ill-founded and unfair.

109. Mr Miller submitted that even if the role was redundant, there was an obvious failure to offer suitable alternative employment. Alternative employment plainly existed in the form of the wider role within TLG, which both the respondent and the claimant were enthusiastic about, but due to the respondent's decision not to recognise the claimant's continuity of service, what was otherwise and in every other respect suitable became unsuitable. That fact also disposes of the respondent's alternative case of some other substantial reason. The claimant, judged by what is now known, was right to be concerned about being unprotected.

110. The clean break which Mr Chacko and others were seeking to achieve was simply not legally possible.

111. These points, it was submitted, were not lost on Mr O'Hara. Indeed, he was candid enough to accept the claimant's service should have "grandfathered" over to the new role and he concluded that that was what ought to happen. The reason that this sensible approach was not executed was because between 5 September when he heard the appeal and 20 September when he dismissed the appeal, Mr O'Hara conferred with Mr Chacko and changed his mind. Mr Miller noted that Mr Chacko had not mentioned this during his evidence.

112. Mr Miller suggested it was possible to follow – if not agree with – Mr O'Hara's reasoning on the substantive case of redundancy in his letter. If however he was right that there was not one but two typos in this letter (in paragraphs 5 and 6 he suggested that his reference to "executive" should have been to "non executive"), it was no longer possible to see the logic of what he had written. The letter, read as typed, neatly brought home the claimant's case that he was dismissed from a post he did not hold.

113. It was submitted that even if these departures from accepted UK workplace norms derived from ignorance rather than design, then for all of those reasons – or any one of them – the dismissal was patently substantively and procedurally unfair. Mr Miller commented on the remarkable fact there was no paper trail of the meetings and discussions between Mr Chacko, Mr Winterton and Mr Knapp.

114. Mr Miller suggested that if the respondent truly thought that its offer of a consultancy agreement or a fresh start with TLG amounted to a reasonable offer of renewal or re-engagement, it would not have paid the statutory redundancy payment. In any event, even if either of these offers amounted to an offer of renewal or re-engagement, it was patently reasonable for the claimant to decline the offers because of the lack of employment protection in each scenario.

115. Mr Miller invited the tribunal to find the dismissal was unfair. The claimant sought the remedy of reinstatement, failing which re-engagement within TLG UK Ltd or any of its associated companies. The claimant also sought compensation for loss of earnings. Those earnings have been agreed at £20,100 per annum gross (£16,281 net per annum). The claimant had, up to the 15 November, lost 70 weeks' pay or £21,916 net. In order for the claimant to enjoy that net award, it has to be grossed up to take into account the tax he will pay at his marginal rate of 19%, producing a figure of £27,067 to which should be added £500 for loss of statutory employment rights. The award would be capped at £20,100.

116. Mr Miller noted the respondent argued the claimant had contributed to his dismissal (pages 48 and 49). There were three aspects to the respondent's argument and Mr Miller submitted none of them had been made out. The first point related to an unwillingness to work to the terms of his original contract. This, it was submitted, was not supported by the evidence: there had been ambiguity and the claimant had agreed to changes to the contract. The second point related to an unwillingness to work to the terms of the proposed re-organised role: there was no evidence to support this. The third point related to the refusal of suitable alternative employment. Mr Miller submitted neither the wider TLG role nor the consultancy role were suitable alternatives.

117. Mr Miller submitted the points raised above demonstrated the respondent's growing frustration with the claimant and revealed the motivation for the dismissal, which was conduct.

118. Mr Miller submitted it had been a condition of sale that the claimant was not permitted to work in the industry, so he had not been able to mitigate his losses.

Discussion and Decision

119. I firstly had regard to the terms of section 98 Employment Rights Act which provide as follows:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

(c) is that the employee was redundant …

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and

(b) shall be determined in accordance with equity and the substantial merits of the case."

120. I also had regard to the terms of section 139 Employment Rights Act which set out the definition of the term "redundancy". The section provides:-

"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(c) the fact that the requirements of that business (i) for employees to carry out work of a particular kind … have ceased or diminished or are expected to cease or diminish…"

121. The terms of section 98 Employment Rights Act make clear that it is for the employer to show the reason for the dismissal. The respondent in this case accepted it had dismissed the claimant and asserted the reason for the dismissal was redundancy, failing which some other substantial reason, being a business reorganisation. Mr Miller, in his submission, argued the claimant's position had not been redundant and that, in fact, the respondent's frustration with the claimant pointed to the reason for dismissal being conduct.

122. I considered firstly whether the reason for dismissal was redundancy. I had regard to the role carried out by the claimant. I noted that prior to the sale of the business to TLG the claimant described that he had been "stepping back" from the business and his focus had been on working as a Chairman, doing "all the entrepreneurial stuff". The claimant went on to tell the tribunal that he went to a lot of familiarisation events, met suppliers and did a lot of networking.

In addition to this he carried out "troubleshooting" so if he saw that something needed done, he would do it.

123. The claimant, albeit he had been reluctant to sell the business, described the sale as an exciting opportunity for TLG to make Barrhead Travel bigger and stronger. The claimant wanted to continue in a role after the sale and he understood he would have an "ambassadorial" role. The claimant stated the role of Chairman and Founder of Barrhead Travel was "always an ambassadorial role".

124. Mr Knapp, who, as part of the Mergers and Acquisitions team, was involved in the sale negotiations, understood the claimant was stepping back from the business and that responsibilities such as shop fit outs and foreign currency would be done by others in the company. It was on this basis that it was agreed the claimant's pre-sale salary of £161,000 would not be a cost to the business going forward, and so it was added back (after a multiplier of 6.5 was applied to the salary) to increase the sale price.

125. Mr Knapp accepted the claimant wanted to keep working, and he told the tribunal he was "amenable to what the claimant wanted the role to be" and that the role of Chairman and Founder was the position which the claimant held prior to the sale. Mr Knapp felt it was "ok for [the claimant] to do as much/little as he wanted given there would be no salary because of the adjustment in the sale price". Ultimately however an hourly rate of £67 was agreed as well as a commission structure for when the special projects came to fruition.

126. I considered there were two material points to be noted from this evidence: firstly that the Employment Contract for the claimant went back and forth several times whilst terms agreeable to both parties were negotiated. Secondly, both parties were clear that the role the claimant was to carry out was Chairman and Founder, which was an ambassadorial role and the activities of the claimant had to be agreed by Mr Chacko, or his designate.

127. The subsequent discussions between the parties, and the email exchanges, are set out above and not repeated here. I considered it very clear on the part

of the respondent that they did not want the claimant to involve himself in Barrhead Travel activities, or involve himself in directing staff or utilising resources. The reasons for this were clear and not disputed: (i) Ms Munro was the CEO of Barrhead Travel and TLG wanted to assess her management performance without the assistance/support/interference of the claimant. This was being done with a view to Ms Munro having a larger role within TLG UK Ltd. (ii) TLG had purchased the whole of Barrhead Travel and it was for them to direct who did what in circumstances where the claimant's salary and involvement in the business had been bought out.

128. I also considered it clear that the claimant, notwithstanding he understood what TLG wanted from him, found it very difficult to step away from Barrhead Travel. I say this for two reasons: firstly because there was no dispute between the parties regarding the fact the claimant was to focus on two special projects. The respondent wanted the claimant to do that himself without involving staff at Barrhead Travel or using Barrhead Travel resources. The claimant considered it not possible to take the special projects forward without support from Barrhead Travel. There was evidence of the claimant asking Ms Dobson and another member of staff to spend some time assisting him, using Barrhead Travel resources and being concerned that there would be sufficient sales staff to deal with phone calls once the special project came to fruition. Secondly, some of the language in the claimant's emails demonstrated his involvement: for example, the claimant's email to Mr Knapp on the 5 March (page 178) where the claimant referred to working for six months of the year; needing to be in the office "a fair amount of time"; stating "At the moment there is no-one else who can do what I do …" and "I don't have a job per se as I look for problem areas as a trouble shooter and I also look for efficiencies as well as a number of other items that other people in the business don't have the time to do". In other emails the claimant referred to having identified a member of Barrhead Travel staff as the person he wished to utilise.

129. Mr Chacko, in his evidence to this tribunal, was particularly understanding of the claimant's position. Mr Chacko appreciated how difficult it was for the

claimant to step back from the company he had created. Mr Chacko took a soft approach with the claimant and tried to gently rein in his activities and involvement with Barrhead Travel, and to focus the claimant away from Barrhead Travel. It was only when this approach failed that Mr Chacko wrote to the claimant in very clear terms on the 2 May. I considered that even allowing for time for the new post-sale arrangements to settle in, and for some refinement and/or clarification of duties and activities to take place, it must have been clear to the claimant by the beginning of May, that TLG wanted him to cease all involvement with Barrhead Travel.

130. I accepted Mr Chacko's evidence that there was a pattern with the claimant of him agreeing to what was said or proposed, but then doing what he wanted with regards to involvement at Barrhead Travel.

131. I also accepted Mr Chacko's evidence that from about March 2018 (page 242 and 260) he was in discussion with Mr Winterton and Mr Knapp about how best to use the claimant to maximise his experience. A number of ideas were noted, such as supplier relationships, networking and contacts, acquisition activity and General Manager of TLG UK Ltd. These ideas were not discussed with the claimant but they were indicative of the good faith of the respondent in terms of their desire to retain a relationship with the claimant. The material point noted by Mr Chacko was that all of the ideas considered were outside, and separate from, Barrhead Travel.

132. The claimant was ultimately (on 23 May) offered a role as Non-Executive Chairman of Travel Leaders Group UK Ltd. The claimant's responsibilities in that role were to be the two special projects he had already been working on, and attending industry events as approved by Mr Winterton. The claimant's place of work was home and/or London. The hourly rate of pay was the same as previously agreed up to a maximum of 25 hours per month or £1675 gross per month. The claimant was also entitled to payment of commission when the special projects bore fruit. There was the potential to earn more commission under the terms of this contract because it was a TLG UK Ltd contract and not just a Barrhead Travel contract.

133. The material fact regarding this contract was that it was with TLG UK Ltd and not the respondent, Barrhead Travel 2007 Ltd. Barrhead Travel would be one of the companies under TLG UK Ltd, but the claimant's role would be separate from Barrhead Travel. I acknowledged the focus of the claimant's duties and responsibilities under the new contract was largely the same as the respondent had previously intended the claimant to carry out, but I considered the key difference to be that the claimant's relationship with Barrhead Travel would be at an end and he would be employed by TLG UK Ltd.

134. I was satisfied the ambassadorial role of Chairman and Founder which the claimant had held whilst employed by Barrhead Travel 2007 Ltd ceased to exist: the requirements of Barrhead Travel 2007 Ltd for the claimant to carry out the work of Chairman and Founder had ceased. I say that for two reasons: firstly, because there was no requirement for a subsidiary company to have a Chairman. I accepted this had been the position from the time of the sale to TLG, and the claimant had been given an honorary position, but I considered this did not detract from the fact Barrhead Travel 2007 Ltd had no requirement for a Chairman, and none of the other subsidiary companies within TLG UK Ltd had a Chairman. Secondly, the requirements of the respondent, Barrhead Travel 2007 Ltd, for the claimant to carry out the ambassadorial work of Chairman and Founder had ceased in circumstances where that work was to be done on a wider basis, at TLG level and to benefit all companies in the TLG UK Ltd group and not just Barrhead Travel.

135. Mr Miller, in his submissions, invited the tribunal to find the respondent misunderstood the role it was making redundant. The basis for this submission was that the respondent thought they were making an operational/Executive Chairman role redundant. I could not accept that submission because I considered the evidence of all of the witnesses was clear that the claimant held an ambassadorial role. I acknowledged the language in some of the letters (notably the appeal outcome letter) referred to an Executive Chairman (that is, an operational chairman) but that did not fit with the evidence given at the hearing. I was entirely satisfied the respondent offered the claimant an ambassadorial role following the sale of

the business, and the claimant accepted this. I considered the subsequent actings of the claimant muddied the water because he appeared to want a greater role/involvement in Barrhead Travel, but this did not change the basic premise that the role he held was an ambassadorial role. Further, it was the ambassadorial role whilst employed with the respondent which ceased to exist because it was going to be done at group level, for all the companies within the group.

136. I concluded the reason for the dismissal of the claimant was redundancy in terms of section 98(2)(c) Employment Rights Act. I was satisfied the respondent had shown the reason for dismissal was redundancy, which is a potentially fair reason for dismissal falling within section 98(2)(c) of the Employment Rights Act.

137. I must now continue to determine whether dismissal for the reason of redundancy was fair or unfair in terms of section 98(4) Employment Rights Act. Mr Miller, in his submissions, challenged the fairness of the dismissal for three main reasons: (i) the outcome of dismissal was predetermined; (ii) the failure to offer suitable alternative employment and (iii) the appeal process.

138. I, in considering Mr Miller's first point, had regard to the evidence of the respondent's witnesses. Each witness acknowledged and accepted they had limited knowledge of UK employment law: they had taken advice and tried to follow that advice. Mr Knapp was referred to the respondent's further particulars at page 53 and paragraph 11, which state that "Ninan Chacko asked Mr Knapp to undertake a consultation with the claimant to discuss the business decision that Ninan Chacko and Andrew Winterton had arrived at." Mr Knapp was asked what the business decision had been, and responded *"to consolidate the UK businesses and terminate the role of Barrhead Chairman. There still had to be due process though".*

139. Mr Chacko, in his evidence in chief, told the tribunal that in mid-May his thinking had been that there was no need for a Chairman of Barrhead Travel. This was consistent with his thinking throughout, because there had never been a need for a Chairman at Barrhead. This was discussed with Mr Knapp

and Mr Winterton, and the options appeared to be to continue with the situation or delete the role of Chairman of Barrhead Travel, subject to consultation with the claimant. The purpose of consultation was to hear the claimant's views prior to making a final decision. Mr Chacko confirmed that nothing came out of the consultation meeting to change his preliminary view that the role of Chairman was not required.

140. Mr Chacko was asked in cross examination whether it was in May that he had reached his conclusion that there was no need for the role of Chairman. Mr Chacko responded, and stressed, that it was a preliminary view. He described it as an "evolving view based on the lack of success in getting the claimant to separate from Barrhead".

141. I had regard to the fact that although discussions took place with Mr Knapp and Mr Winterton, the decision was ultimately made by Mr Chacko. I accordingly concluded that it was Mr Chacko's evidence which had to be scrutinised regarding whether the decision in May was preliminary or definitive. I accepted Mr Chacko's evidence that his decision in May was preliminary and subject to the consultation process with the claimant. I considered I was supported in that conclusion by the fact that deleting the role was but one option for Mr Chacko to consider: another option would have been not authorising the claimant to do any work. I decided, for these reasons, that I could not accept Mr Miller's submission that the outcome of dismissal was predetermined.

142. I next considered the issue regarding suitable alternative employment. There was no dispute regarding the fact that prior to the consultation process, the claimant was offered a new contract to commence employment with TLG UK Ltd. The claimant refused this offer for the stated reason that the contract did not include his continuity of service. The claimant also told the tribunal that he had, by this time, lost trust in TLG and he was concerned that if he accepted the new contract, he would be dismissed the following day. The claimant thought service had been excluded for a reason, and he wanted the employment protection that his service would give.

143. Mr Miller, in his submission to the tribunal, argued the respondent could have included continuity of service in the contract, and their failure to do so rendered suitable alternative employment unsuitable.

144. Ms Stobart, in her submission to the tribunal, argued the claimant had not been disadvantaged by the fact continuity of service had not been included in the contract and that, in fact, the claimant would not have accepted the contract even if continuity of service had been included.

145. I, in considering whether suitable alternative employment had been offered to the claimant, had regard to the fact that offering alternative employment on an unreasonable basis is capable of rendering an otherwise fair dismissal unfair **(Elliot v Richard Stump Ltd 1987 IRLR 213)**.

146. I asked whether suitable alternative employment had been offered on an unreasonable basis. I noted Mr Chacko accepted continuity of service had been deliberately omitted from the contract because TLG UK Ltd wished there to be a total separation of the claimant from Barrhead Travel. The effect of Mr Chacko's decision meant the service the claimant had accrued, and which had been recognised after the sale to TLG UK Ltd, was removed from the contract and the claimant would be required to start afresh with TLG UK Ltd if he accepted the contract.

147. I acknowledged Mr Chacko expected the claimant to negotiate regarding the terms of the contract but the material fact is that the claimant was entitled to have his continuity of service recognised without having to negotiate for its' inclusion in the contract.

148. I decided the TLG UK Ltd position offered to the claimant was suitable alternative employment, but the omission of continuity of service meant the offer was offered on an unreasonable basis (The submissions made by Ms Stobart are considered below).

149. I next had regard to the procedure followed by the respondent generally and in respect of the appeal. I have set out above that a preliminary decision was taken to delete the post held by the claimant and that this was subject to a

consultation process with the claimant. Mr Chacko and Mr Knapp recognised the purpose of the consultation process was to seek the claimant's views regarding the preliminary decision and to understand whether he had any alternative suggestions. I noted the claimant accepted the notes of the consultation meeting accurately reflected the discussion and he made no criticism of the consultation process during his evidence.

150. The claimant also accepted the notes of the appeal meeting as being accurate. He referred to the issue of service having been discussed with Mr O'Hara, but the claimant felt Mr O'Hara had not understood the point. Mr Miller, in his submission, was critical of Mr O'Hara for discussing the appeal with Mr Chacko (who had taken the decision to dismiss) and being influenced by what he said. I, in considering this matter, noted there was no dispute regarding the fact Mr O'Hara had discussed the appeal points with Mr Chacko and he told the tribunal he had done this because he had not been involved in the daily operations. Mr Chacko made him aware the claimant had been disruptive and that there had been attempts to mend the relationship which had failed. Mr O'Hara accepted what he had been told and he further accepted he had been influenced by this.

151. Mr O'Hara's evidence was confused regarding the issue of continuity of service. Mr O'Hara described the significance of continuity of service to be the "severance payment": he was not aware of unfair dismissal protection. Mr O'Hara confirmed he had authority to re-issue the TLG contract with continuity of service included, and that had been his recommendation to the management team. This had also been discussed with Mr Chacko and he had been told TLG did not want to re-issue the contract on that basis, and that the claimant had been paid his redundancy payment based on service. Mr O'Hara accepted this and did not proceed with his recommendation.

152. The opportunity to appeal is essential to natural justice and the appeal is part of the dismissal process, which must be carried out reasonably if a dismissal is to be fair. I did not consider the fact Mr O'Hara discussed the appeal points with Mr Chacko to automatically be a flaw in the procedure followed by Mr O'Hara. I accepted Mr O'Hara had not been involved in the daily operations

and would need to acquire an understanding regarding what had happened in order to address the points the claimant raised.

153. I decided however that there was a flaw in the appeal procedure which arose from the fact Mr O'Hara accepted at face value what he had been told by Mr Chacko about the claimant being disruptive, and allowed this to influence his decision regarding the appeal. There was no evidence regarding what Mr O'Hara had been told about the claimant being disruptive, and accordingly it was not possible to determine whether this information was relevant (or not) to the points Mr O'Hara had to determine. The material point however was that Mr O'Hara did not give the claimant an opportunity to respond to the points in circumstances where he allowed this to influence his decision regarding the appeal.

154. I referred above to Mr O'Hara's evidence, regarding the issue of continuity of service, being confused. I was satisfied, however, that Mr O'Hara understood the significance of continuity of service to be in terms of a "severance payment". I say this because Mr O'Hara was not aware of the concept of employment protection. I was further satisfied that Mr O'Hara's recommendation to re-issue the TLG contract with continuity of service was not pursued once he learned the claimant had been paid a redundancy payment based on service.

155. I, having addressed the three points raised by Mr Miller in his submissions, must now determine whether the dismissal of the claimant for reasons of redundancy was fair or unfair in terms of section 98(4) Employment Rights Act. I have set out above my conclusions that the outcome of dismissal was not predetermined, that the claimant was offered suitable alternative employment but on unreasonable terms and that there was a flaw in the appeal process carried out by Mr O'Hara. I must now consider the fairness of the dismissal in these circumstances.

156. I had regard to the case of **Polkey v A E Dayton Services Ltd 1988 ICR 142** where the House of Lords stressed the importance of following proper procedures. It was stated in that case that *"In the case of redundancy … the*

employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation". The House of Lords stressed the question for the tribunal was whether the employer had acted reasonably in deciding that the reason for dismissing the employee was sufficient, not whether the employee would have been dismissed even if warning or consultation had taken place.

157. I applied these principles to the facts of this case: the question I must ask if whether the respondent acted reasonably in deciding the reason for dismissing the claimant was sufficient. The question is not whether the claimant would have been dismissed even if a fair procedure had been followed (that issue is considered when calculating compensation).

158. I decided the offer of alternative employment on unreasonable terms and the flawed appeal process rendered the dismissal of the claimant unfair.

159. I must now go on to consider the remedy to which the claimant is entitled. The claimant sought the remedy of reinstatement, failing which re-engagement, failing which compensation. An Order for reinstatement is an order that the employer (Barrhead Travel 2007 Ltd) shall treat the claimant in all respects as if he had not been dismissed (section 114 Employment Rights Act). An Order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment (section 115 Employment Rights Act).

160. I had regard to the terms of section 116 Employment Rights Act which provide that in exercising its discretion under section 113 (to make an order for reinstatement or re-engagement) the tribunal shall first consider whether to make an order for reinstatement, and in so doing shall take into account (a) whether the complainant wishes to be reinstated, (b) whether it is practicable for the employer to comply with an order for reinstatement and (c) where the

complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

161. The claimant has stated he does wish to be reinstated. I must next consider whether it would be practicable for the employer to comply with an order for reinstatement. I noted that when assessing practicability, the EAT in **Meridian Ltd v Gomersall 1977 IRLR 425** said tribunals should not try to analyse in too much detail the application of the word "practicable" but should look at the circumstances of each case and take a "broad common sense view".

162. I, in considering practicability, had regard to the fact the role of Chairman and Founder with the respondent no longer exists.

163. I next had regard to the fact the relationship between the claimant and TLG (who wholly own Barrhead Travel 2007 Ltd) has broken down. The claimant stated in his evidence to the tribunal that he did not trust TLG: he thought Mr Chacko had deliberately excluded continuity of service from the TLG UK Ltd contract, with a view to dismissing the claimant the day after he had started that contract. Mr Miller submitted the claimant had been right to have these concerns because Mr Knapp, in an email to Mr Chacko, had made reference to the claimant being dismissed. I acknowledged the content of that email but considered it had to be seen in the context of Mr Knapp's concern which related to the fact the claimant's salary had been added back to the sale price. Mr Knapp clearly saw the claimant as trying to have his cake and eat it and Mr Knapp's solution to that was to terminate the relationship with the claimant. Mr Knapp however was not the decision-maker with regards to the ongoing relationship with the claimant and accordingly I did not attach much weight to the email.

164. I also had regard to the fact the management team of TLG no longer had trust and confidence in the claimant's promises to separate from Barrhead Travel. Mr Chacko spoke of a pattern whereby the claimant would agree to what was being proposed and then carry on with his involvement in Barrhead Travel. Mr Chacko no longer trusted the claimant to do what he said, or what had been agreed in terms of separating from the respondent.

165. I next had regard to the fact that reinstating the claimant would put him back into a position of conflict with TLG management team. I found as a matter of fact that whilst there was a desire on the part of TLG to use the claimant's experience and contacts for the benefit of the TLG UK Ltd business, it was fundamental to them that the claimant separate from Barrhead Travel Ltd. The claimant, for reasons which are set out above and not repeated here, was either unwilling or unable to make that separation.

166. I also had regard to the fact that although I did not hear evidence from Ms Dobson, the current Chief Executive of Barrhead Travel Ltd, the respondent's evidence that Ms Dobson had reported difficulties with the claimant's involvement with Barrhead Travel, was not challenged. The reinstatement of the claimant and his desire to involve himself in "troubleshooting" and/or utilising resources would create difficulties for Ms Dobson. It would also create a tension for members of staff who would be unwilling or unable to refuse the requests of the claimant given his previous position in the company.

167. I concluded, having had regard to all of these reasons, that it would not be practicable for the employer to comply with an order for reinstatement.

168. The respondent argued the claimant had caused or contributed to his dismissal. They set out their position at page 49, where it was stated*: "The claimant's contributory conduct was his unwillingness to work to the original terms of his original contract, and /or his unwillingness to work to the terms of his proposed re-organised role, and/or his refusal of reasonable alternative terms and conditions offered to him by the respondent."* Ms Stobart, in her submissions, said it was disingenuous to suggest anyone from the respondent thought the original role was operational. It was ambassadorial. It was the claimant who was trying to involve himself at Barrhead Travel and so the respondent had to make it clear that there was no role at Barrhead. The claimant could not accept he was to work at home on special projects, and network for TLG and not Barrhead Travel. The proposed re-organised role related to the amendments to the original contract made on the 2 May and accepted by the claimant on the 8 may. The claimant refused to engage in

good faith in the new contract, or the consultancy agreement because he did not want it.

169. Mr Miller, in his submissions, said the suggestion the claimant had been unwilling to work to the terms of his original contract was unsupported by the evidence. There had been ambiguity and the claimant had agreed changes to that contract. There was no evidence of the claimant's alleged unwillingness to work to the amended contract. Further, neither the TLG UK Ltd contract nor the consultancy agreement were suitable alternative employment.

170. I, in considering the issue of contributory conduct, had regard to the case of **Nelson v BBC (No 2) 1980 ICR 110** where the Court of Appeal held that three factors must be satisfied if the tribunal is to find contributory conduct:-

- the relevant action must be culpable or blameworthy;
- it must have actually caused or contributed to the dismissal and
- it must be just and equitable to reduce the award by the proportion specified.

171. I was satisfied the claimant was unwilling to work to the terms of the original contract. I considered this conclusion was supported by the evidence and in particular by the references in some of the emails sent by the claimant to Mr Chacko. The emails (referred to above) made clear the claimant wanted to be based in the office, wanted to continue to "troubleshoot", wanted to utilise staff and resources as he saw fit and took umbrage at being asked to work from home. The claimant's reference to being unable to work at home because he would not have his licence was, at best, a complete red herring.

172. I have acknowledged Mr Chacko adopted a soft approach with the claimant initially, but it was evident from the correspondence that in an effort to stop the claimant's involvement with Barrhead Travel, duties and authorisation were tighten significantly. My impression of the claimant's evidence was that although special projects were his interest, he wanted to pursue that interest by doing what he had always done, and that was using Barrhead Travel staff

and resources when he needed them to support what he was doing. I concluded this was blameworthy conduct in circumstances where it was clear the management team of TLG wanted him to cease involvement with Barrhead Travel.

173. I was further satisfied the claimant was unwilling to work to the terms of the amended original contract which were agreed on the 8 May. This much was evident from the fact the claimant received the "at risk of redundancy" letter dated 25 June. I further noted the claimant did not, in his evidence, seek to rebut what Mr Winterton had stated in his email to Mr Chacko on the 25 May (page 265).

174. I was not satisfied the claimant's rejection of the TLG contract caused or contributed to his dismissal. I say that for two reasons: firstly because the claimant was entitled to have his continuity of service recognised and secondly because it was for him to decide whether the offer was reasonable.

175. I was satisfied the claimant's conduct (by refusing to cease his involvement with Barrhead Travel and by being unwilling to work to the terms of the amended contract) contributed to his dismissal by 100%.

176. I decided not to make an order for reinstatement because I concluded it would not be practicable for the respondent to comply with an order for reinstatement and such an order would not be just in circumstances where the claimant had contributed to his dismissal.

177. I next considered whether an order for re-engagement should be made and I had regard to the points set out in section 116(3) Employment Rights Act. The first point to consider is any wish expressed by the claimant as to the nature of the order to be made. The claimant in his evidence spoke of reinstatement, rather than re-engagement. The second point to be considered is whether it would be practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement. Mr Miller, in his submission, referred to re-engagement with TLG UK Ltd or any of its associated companies. I considered whether it would be practicable for the respondent or TLG UK Ltd to comply with an order for re-engagement. I

concluded it would not be practicable for them to comply with an order for re-engagement. I reached that conclusion having had regard to the points set out above regarding the breakdown in the relationship between the claimant and TLG management team. Mr O'Hara spoke of relationships being "damaged" and of matters having gone "too far". I accepted that evidence and concluded that relationships had been damaged and that there was a lack of trust and confidence on both sides.

178. I decided not to make an order for re-engagement because I concluded it would not be practicable for the respondent or TLG UK Ltd to comply with an order for re-engagement. Further, the conclusions set out above regarding contributory conduct apply equally to the order for re-engagement. I, in addition to this, noted there was no evidence to suggest re-engagement to any of TLG UK Ltd's associated companies would be practicable.

179. I next had regard to the remedy of compensation. I noted the claimant would not be entitled to a basic award in circumstances where he had received a redundancy payment.

180. I referred above to the application of the ***Polkey*** principles and I noted the issue of whether the claimant would still have been dismissed even if a fair procedure had been followed, was one to be considered at the calculation of compensation stage. There are two issues to be considered:- (i) the respondent's argument that the claimant would not have accepted the TLG contract even if continuity of service had been included and (ii) the appeals procedure.

181. Ms Stobart invited the tribunal to find the claimant would not have accepted the TLG contract even if continuity of service had been included. This submission was based on the respondent's position that the real reason the claimant did not want to accept the contract was because he did not want to give up his involvement in Barrhead Travel. Ms Stobart also pointed to the fact the claimant had refused the offer of a Consultancy Agreement once the issue of service had been resolved by the payment of a redundancy payment.

182. I, in considering this submission, had regard to a number of points. Firstly, I noted there was no dispute regarding the fact the claimant had, following the sale of the respondent company to TLG, accepted a zero hours contract. The claimant's hours of work had to be authorised, and the claimant understood Mr Chacko could have refused to authorise any hours for the claimant to work.

183. Secondly, the claimant told the tribunal repeatedly that this was not about the money, but about the fact he wanted to work. The claimant described the TLG offer as "the perfect job" and "an exciting opportunity". I considered however that those statements were undermined by the fact the claimant did not enter into negotiations to try to agree acceptable terms for the contract. The claimant was a senior executive: it was expected that he would negotiate regarding the terms of the contract. This was supported by the fact the claimant had entered into negotiations to agree suitable terms for the initial contract he held after the sale of the respondent company. The claimant at no time during his evidence offered an explanation why he had not tried to negotiate acceptable terms.

184. Thirdly, the claimant, at no stage either during his discussions with Mr Chacko or at this hearing, stated that he would accept the TLG contract if service was included. I considered this to be significant. I also considered it significant that the claimant did not, in his list of questions put to Mr Gabbie, make reference to the issue of continuity of service.

185. Fourthly, the claimant told the tribunal he had lost trust in TLG and he was concerned that if he accepted the contract he would be dismissed the following day.

186. Fifthly, I found as a matter of fact that the claimant found it difficult, if not impossible, to cease interaction with Barrhead Travel. This finding was supported by the various emails between the claimant and Mr Chacko and others, the discussions between the claimant and Mr Chacko and others and the discussions Mr Chacko had with Mr Winterton and Mr Knapp.

187. The claimant's inability to separate from Barrhead Travel was at the heart of this case. I had regard to the email of the 25 May (page 273a) sent by the

claimant to Mr Winterton and Mr Chacko regarding the TLG contract. In the email the claimant referred to having "quite a lump in [his] throat" when he saw there would be no period of continuous service. The claimant went on to say "I understand the reasoning behind your suggestion that I step away from Barrhead, but this drafting alone highlights to me the magnitude of the step I am being asked to take".

188. I considered this email disclosed the claimant's realisation that if he signed the TLG contract it would sever his relationship and links with Barrhead Travel. The "magnitude" of the step he was being asked to take did not relate to the issue of service: it related to the separation from Barrhead Travel.

189. I acknowledged the claimant's position was that he had done what was asked of him, but I was satisfied this was not supported by the evidence. The reality was that the claimant wanted to continue to have an office within Barrhead Travel and to use Barrhead Travel staff and resources as he saw fit to support his activities. I considered Mr Chacko's instruction to the claimant to give up his office and to work from home was a key point in the chronology of events. I say this because I considered that (a) it was at this point that the claimant lost trust in the respondent and (b) that was caused by the fact the claimant did not want to work from home and be separated from Barrhead Travel and the way in which he had worked for so many years.

190. I concluded, having had regard to all of the above points, that the issue of continuity of service masked the real reason why the claimant did not accept the TLG contract. I concluded the real reason why the claimant did not accept the TLG contract was because he had lost trust in Mr Chacko and others. This loss of trust was caused by the claimant's appreciation that he was not going to be allowed to continue to have an office at Barrhead Travel and he was not going to be allowed to continue to use Barrhead Travel staff and resources as he saw fit. The claimant refused the TLG contract because he realised that if he accepted it, it would result in a separation from Barrhead Travel and this was something the claimant could not contemplate.

191. I decided, for all of these reasons, that even if continuity of service had been included in the TLG contract, the claimant would not have accepted it. I further decided, applying the ***Polkey*** principles that even if continuity of service had been included in the TLG contract there was a 100% chance the claimant would not have accepted the contract. I say that because continuity of service was not the real reason the claimant refused the contract.

192. I next considered the flawed appeal procedure. I have set out above my conclusion that the flaw in the appeals procedure related to the fact Mr O'Hara accepted, at face value, what he was told by Mr Chacko regarding the claimant being disruptive, and he allowed that to influence his decision regarding the outcome of the appeal. I asked whether the claimant would still have been dismissed if Mr O'Hara had followed a fair procedure regarding this point. I was entirely satisfied the claimant would still have been dismissed even if a fair procedure had been followed at the appeal hearing.

193. I say that because even if Mr O'Hara had spoken to the claimant about what he had been told by Mr Chacko, he would still ultimately have had to make a decision based on whose evidence he preferred. I considered, given the terms of the email correspondence and the discussions Mr Chacko had had with the claimant and others, that Mr O'Hara would have preferred Mr Chacko's version of events regarding the claimant's repeated failure to stand back from the business and activities of Barrhead Travel.

194. I, for this reason, decided that if a fair procedure had been followed, there was a 100% chance the claimant would still have been dismissed.

195. The effect of my decision is that any compensatory award would be reduced by 100% to nil.

196. I, in conclusion, decided the claimant had been unfairly dismissed. I decided it would not be practicable to order reinstatement or re-engagement. The claimant's entitlement to a basic award is offset by the fact he received a redundancy payment. The compensatory award is reduced to nil because of a 100% ***Polkey*** reduction. In addition to this the tribunal found the claimant had contributed to his dismissal by 100%.

197. I should state that if I have erred in my conclusion that the circumstances of this case fell within the definition of redundancy, I would have accepted the respondent's alternative position that the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held, namely a business reorganisation. I would have reached the same conclusion regarding the fairness of the dismissal and the reductions to be made to compensation.

Employment Judge : L Wiseman
Date of Judgment : 13 January 2020
Date sent to parties : 14 January 2020