EMPLOYMENT TRIBUNALS

Claimant: **Mr G Bull**

Respondent: **Cardiff City Football Club Limited**

Heard at: **Cardiff via CVP** **On: 3 September 2021**

Before: **Employment Judge S Jenkins (sitting alone)**

Representation:
Claimant: Miss C Urquhart (Counsel)
Respondent: Miss P Leonard (Counsel)

RESERVED JUDGMENT

The Claimant's claims; of unfair dismissal, breach of contract, for a redundancy payment, of unauthorised deductions from wages, and for payment in respect of accrued but untaken holiday; all fail and are dismissed.

REASONS

Background

1. The hearing took place to consider the Claimant's claims of unfair dismissal, breach of contract, unauthorised deductions from wages, and for a redundancy payment (in fact, the calculation of the amount of that payment rather than the entitlement itself), and for payment in respect of accrued but untaken holidays.

2. I heard evidence from the Claimant on his own behalf, and from Dawn Williamson, Head of Human Resources, and Phillip Jenkins, Finance

Director, on behalf of the Respondent. I considered the documents in the hearing bundle to which my attention was drawn, together with some additional documents produced by the Claimant on the day of the hearing. I also considered the oral submissions of the Claimant's representative, and the written and oral submissions of the Respondent's representative.

Issues and Law

3. An agreed list of the issues to be determined at the hearing was produced by the parties at the start of the hearing and they were as follows:

The contract

1. Was C employed by R under a permanent contract of employment dated 1 February 2016 followed by a series of fixed-term contracts dated 1 August 2017, 1 August 2018, 1 August 2019, 1 August 2020, 1 September 2020 and 1 October 2020?

2. What is the legal basis for asserting C was employed by R under a permanent contract of employment dated 1 February 2016 beyond August 2017 given the signed fixed term contracts?

3. If C was employed under a permanent contract of employment dated 1 February 2016, when was notice given?

4. When did C's employment end? R states 30 October 2020 and C states 6 January 2021.

5. Is the Claimant entitled to notice pay? If so, in what sum?

6. Does Regulation 8 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002/2034 apply? *[It is not clear whether this is being asserted given the fixed term was 3 years 3 months – it appears this is not an allegation being put forward]*

7. If Regulation 8 is applicable, were the series of fixed term contracts objectively justified?

Unlawful deduction from wages

8. It is accepted by both parties that C entered into a contract with R and

a separate contact with the Chinese partners. What is the legal basis for asserting R is responsible for the Chinese partner's contractual obligations? In particular,

a. during the period September 2016 to October 2020, if the Chinese partners did not pay the Claimant in full or at all, was R obliged to make up the shortfall?

b. was R obliged to fulfil the Chinese partner's contractual obligations regarding payment during November and December 2020? If so, in what sum?

9. Do the alleged unlawful deductions form a series of deductions with the last one being presented in time (subject to undertaking ACAS early conciliation)?

10. If not, was it reasonably practicable to bring such a claim within time?

11. If not, has it been presented within such time as the Tribunal considers reasonable?

12. How much is the Claimant entitled to?

13. Does the two year backstop apply to any claim prior to 28 January 2019?

Unfair dismissal

14. R's case is that C's fixed term contract with the Respondent was not renewed following its expiry on 30 October 2020, by reason of redundancy. The parties agree that redundancy was the potentially fair reason for the dismissal.

15. Having regard to the size and administrative resources of the Respondent, was the dismissal fair? In particular:

a. Did the Respondent carry out an appropriate individual consultation process?

b. Did the Respondent consider alternatives to redundancy for the Claimant?

16. Should the Claimant have been given the opportunity to appeal

against the decision to dismiss him?

17. Had the Claimant gone through a fair redundancy selection procedure, what is the likelihood he would have kept his job?

18. If the Claimant's claim is well-founded, to what compensation is he entitled? Is he entitled to:

a. Statutory redundancy pay?

b. A basic award?

c. A compensatory award?

d. Compensation for loss of statutory rights?

19. Has the Claimant mitigated his loss?

Holiday pay

Is the Claimant entitled to any holiday pay? If so, in what sum?

4. In relation to the Claimant's claims of breach of contract and unauthorised deductions from wages, and in relation to the calculation of the amount of the redundancy payment, the principal issue for me to assess was the underlying contractual position. Was it governed, as the Claimant contended, by an initial permanent contract, entered into in England and Wales and subject to the law of England and Wales, by the Claimant at the start of his employment? Or was it governed, as the Respondent contended, by later contracts, operating for successive fixed term periods in England and Wales, and also by contracts, entered into in China and subject to Chinese law, with various Chinese schools. For convenience, I refer to these schools by the term which appears to have been adopted by the parties, of "Chinese Partners".

5. The essence of the Claimant's position was that the contractual position, ostensibly established by the existence of written English and Welsh and Chinese contracts applying from 2017 onwards, did not correctly reflect the legal position. Three alternative bases for that were advanced:

(i) That there was no valid termination or variation of the initial contract which therefore continued to apply.

(ii) In the alternative, the contracts entered into by the Claimant with the Chinese Partners were entered into by those Chinese Partners as

agents for the Respondent, with the Respondent continuing to be liable for the Chinese Partners' obligations.

(iii) Alternatively, that the written documentation did not reflect the true agreement between the parties and therefore, applying the guidance of the Supreme Court in the case of ***Autoclenz Limited -v- Belcher and others*** **[2011] ICR 1157**, should be disregarded.

6. The Respondent's position was that the initial contract entered into between the Respondent and the Claimant was properly and validly overtaken by the later contracts which operated on a dual basis, under a succession of fixed term contracts in England and Wales and under separate concurrent contracts with Chinese Partners in China. The Respondent contended that there was no agency relationship between it and the Chinese Partners, and that the contractual documentation accurately represented the agreed intentions of the parties.

Findings

7. The Claimant was engaged by the Respondent as an International Development Coach, and commenced employment on 1 February 2016. He was engaged as part of the Respondent's International Football Development Department, although it does not appear that the department ever expanded beyond China. The department was originally operated by the Cardiff City FC Foundation, a charitable organisation separate from the Respondent itself, but it was subsequently taken over by the Respondent itself.

8. The Claimant was initially engaged on a fairly standard, permanent, employment contract which commenced on 1 February 2016. In this, the Claimant was engaged as Football Development Coach China and, following a six month probationary period, his employment was subject to termination on three months' written notice. His place of work was stated to be at Cardiff City Stadium whilst in the UK, and at designated schools in Beijing, and additional satellite venues within Cardiff or Beijing as the Respondent may relocate him to from time to time. The salary was £19,000 per annum. The Claimant was provided with a work uniform, essentially training kit, and the contract provided that the Claimant would receive full accommodation and utilities whilst working in China, based on a single room in a shared venue. It was noted that the Claimant would receive full medical insurance for the duration of his contract.

9. The Claimant reported under the contract to the Respondent' Head of International Development, and Mr Joel Hutton was appointed to that role shortly after the Claimant commenced his employment.

10. The contract also contained a clause in which the Respondent reserved the right to make minor alterations to its terms from time to time by giving one month's written notice, and that no other variation would be of effect unless it had been agreed in writing and signed by or on behalf of both parties.

11. Following the commencement of the Claimant's employment, he was based at the Cardiff City Stadium whilst arrangements with the Chinese Partners were confirmed. Other coaches, at the peak there were seven in total, were recruited after the Claimant, and the coaches travelled out to China in September 2016.

12. Within the bundle were three contracts entered into by the Respondent with different Chinese Partners. These were broadly identical, subject to the participation in one of them of another Chinese company as an intermediary. Two were expressed to run for twelve months in length, with the third expressed to run for two years.

13. Each document contained identical provisions, noting that the Chinese Partner, and in the case of the contract involving the intermediary, the intermediary, would act as principal and not as agent of the Respondent, that the Chinese Partner would not say or do anything which might lead any other person to believe that the Chinese Partner was acting as agent, and that nothing in the agreement would impose any liability on the Respondent in respect of any liability incurred by the Chinese Partner.

14. Each contract provided that the Respondent would provide an appropriately experienced and qualified coach, and that the Chinese Partner would undertake the procurement of the Chinese work visa for the coach, would provide accommodation for the coach, transport from the accommodation to the work location for the coach, and would pay the coach's salary. The Chinese Partner would then pay a fee to the Respondent for the services provided.

15. Within the bundle also were two documents entitled "Foreign Teacher Employment Contract", entered into between the Claimant and an individual Chinese Partner. Again, both documents appeared to be very much in standard form, and provided that the particular Chinese Partner would pay the Claimant's salary and provide accommodation, and in return the Claimant would work for 25 lessons each week, with the provision of

additional payments for any additional lessons. Each contract provided for holidays and sickness absence and pay.

16. At about the time that the Claimant and his fellow coaches moved to China in September 2016, internal discussions within the Respondent, between Mr Hutton and Mrs Williamson, took place regarding the payments to be made to them. Up to that point the coaches' salaries had been paid entirely by the Respondent, but, in an email to Mrs Williamson on 20 September 2016, Mr Hutton noted that, from then, on the coaches would need to be paid £10,000 by the Respondent, with the remaining £9,000 of the salary to be paid in China by the schools in which they were working. Mr Hutton noted that it was his understanding that it was a requirement for the type of work visa that the coaches had obtained.

17. After some exchanges with the Chinese intermediary, which confirmed that deductions would need to be made in China for medical and social insurance, and that the salary would be paid over ten months rather than twelve, those arrangements were put in place.

18. The Claimant's Schedule of Loss indicated that he was not paid the Chinese element of his salary for the months of September, October and November of 2016, and that he was again not paid the Chinese element in August 2017, and in the months of September, October and November 2019. He was also then not paid the Chinese element from March 2020 onwards although, as I note below, he had by then returned from China due to the Covid-19 pandemic. The Claimant noted in his evidence that at no time did he receive any form of payslip from any of the Chinese Partners for whom he was working, and would only know that his salary had been paid or, as the case may be, had not been paid, when checking his account balance at an ATM in China.

19. No adjustment was made to the Claimant's contractual documentation with the Respondent following his departure to China. However, in August 2017, at a point when the Claimant and the other coaches had returned to the UK for a short period and were attending at the Cardiff City Stadium, the Respondent considered that it would be appropriate to alter the contractual relationship with the coaches so that they operated under fixed term contracts to coincide with the contracts that the Respondent itself was entering into with the Chinese Partners. Those contracts would also reflect the reduced salary that the Respondent was going to pay due to the fact that part was being paid by the Chinese Partner.

20. A letter was sent by Mrs Williamson to the coaches, including the Claimant, on 15 August 2017, inviting them to a meeting on 21 August 2017 to

discuss variations of the contract from permanent to fixed term. The letter confirmed that the Respondent was proposing to serve three months' notice to terminate the existing contract, with the new contract starting immediately after that period had elapsed. The letter noted that the change was, "*necessary to coincide with the club's own contract with our partners and schools in Beijing*". A copy of the proposed new contract was attached. The letter concluded by saying that the Respondent was seeking agreement to the proposed changes, and that if the Claimant wished to accept the offer after the meeting he should sign and date the contract.

21. The parties' evidence differed over this letter and the meeting. The Claimant indicated that, whilst a meeting took place on 21 August 2017, he had no recollection of it covering a variation to contracts, and instead recalled that it covered safeguarding issues. He also did not recall signing the contract which appeared in the bundle. Mrs Williamson, on the other hand, indicated that she had a clear recollection of the meeting, and that if there had been a discussion about safeguarding it had taken place at a time when she was not in the room. She stated that she had attended the meeting anticipating that there would be questions from the coaches, but that none of them had any questions for her, and that all were happy to sign the new fixed term contracts and indeed did so.

22. On balance, taking into account the clearly and forcefully expressed evidence of Mrs Williamson, in contrast with the Claimant who appeared rather more equivocal about the events, and also the existence within the bundle of the letter sent by Mrs Williamson to the Claimant in August 2017 and the contract of employment dated 16 August 2017 which contained the Claimant's signature, I considered that the Claimant had openly and voluntarily entered into the fixed term contract at that time.

23. That contract was expressed to commence on 1 August 2017 and to continue for 12 months. It confirmed that the Claimant's continuity of employment went back to 1 February 2016.

24. Although that contract was expressed to expire on 31 July 2018, nothing was done about extending it or replacing it at that time. However, in January 2019, Mrs Williamson emailed the Claimant, attaching a copy of a new fixed term contract on the same terms as the initial one, to run from 1 August 2018 to 31 July 2019. The Claimant was asked to sign and return a copy of the back page of the document.

25. The Claimant in his evidence indicated that he did not receive this email from Mrs Williamson due to the impact of the firewall in China. He contended that he did not receive the documents until he needed to confirm

his employment position for the purposes of a mortgage application with his brother. Nevertheless, the Claimant did indeed sign, and confirmed that he had a recollection of signing, the second fixed term contract. A further fixed term contract was then entered into on 20 August 2019 covering the 12 month period from 1 August 2019.

26. All the fixed term contracts included the same terms, which noted the place of work in Beijing, that the Respondent would pay the Claimant a salary of £10,000, which had increased to £10,762.56 per annum in the 2019/20 year, and that accommodation would be provided in China. It otherwise contained very much the same provisions as the Claimant's initial permanent contract.

27. The Claimant's evidence was that, notwithstanding the contract he had entered into with the Chinese Partners, he continued to report to Mr Hutton, and a Chinese speaking co-ordinator employed by the Respondent, about the arrangements for his work in China and the work he was undertaking.

28. He also confirmed that he had spoken to Mr Hutton on several occasions about not being paid in China for the months outlined above. Mr Hutton left the Respondent's employment at around the same time as the Claimant's employment ended, when the International Development Department was closed down, and was not present to give evidence before me. There was also no documentary evidence that the Claimant had raised such concerns.

29. The Claimant confirmed that he had not taken matters forward within the Respondent's organisation, whether to Mrs Williamson from an HR perspective or with the Respondent's finance department. He explained that the reason for that was that Mr Hutton had made it clear that he was unhappy with the Claimant speaking to people within the Respondent's organisation other than himself, and had been angry with the Claimant when he had contacted Mrs Williamson directly about accommodation issues during a return visit to the UK.

30. Mrs Williamson and Mr Jenkins both indicated that they did not recognise the description of Mr Hutton as someone who would have reacted angrily to such a suggestion, or as someone who would have sought to prevent the Claimant from raising issues with other members of staff. Mrs Williamson also confirmed that she had a good relationship with the Claimant, as he and another coach had stayed with her at her home in the summer of 2016 just prior to departing for China. She confirmed in her evidence that she felt quite maternal towards the two coaches and that she believed they saw her as a "mother figure".

31. On balance, I concluded that the Claimant had not raised his concerns about pay with Mr Hutton. Had he done so, I anticipated that here would have been a written record of a response, particularly as I anticipated that communications between China and the UK would have been done by way of email or text message. I also anticipated that there would then have been evidence of escalation of the issues, whether by Mr Hutton or the Claimant, within the Respondent's organisation.

32. In January 2019, the Chinese Partners which were state schools confirmed that they were no longer going to participate in the arrangements with the Respondent and the coaches working with those particular schools were made redundant at the time, leaving only the Claimant and one other coach, both of whom were working with a private school, remaining in post.

33. By the end of 2019 however, Covid-19 had taken effect in China, and the Chinese Partners treated the contracts with the Respondent as at an end. The Claimant returned to the UK from China at the end of January 2020.

34. Following the imposition of the lockdown in the UK in March 2020, the Claimant was placed on furlough and received payments under the Coronavirus Job Retention Scheme relating to his salary from the Respondent, i.e. at that point, £10,762.56 per annum.

35. As the existing fixed term contract was coming to an end on 30 July 2020, Mrs Williamson wrote to the Claimant on 30 July 2020 noting that the contract would be extended until 31 August 2020. A similar letter was sent by Mrs Williamson on 27 August 2020 extending the contract further until 30 September 2020.

36. In the meantime, on 18 August 2020, the Claimant emailed Mrs Williamson outlining that he had a proposal about how the International Department could be developed, and that he wanted to "*pitch*" that to the Respondent's Chief Executive Officer ("CEO"). He indicated that he would appreciate an opportunity to sit down with Mrs Williamson to run through his thoughts with her and gain her input on how to move forward. He also noted that he hoped that he could rely on Mrs Williamson's discretion as he did not want his ideas to affect the project in its current state.

37. The Claimant in fact met with the CEO at the end of August 2020. Again there was a difference of view of the parties in their evidence as to what was discussed at that meeting and what then happened. I had no direct evidence from the CEO and there was no written documentation to evidence what had been discussed. The Claimant contended that the CEO had offered him the opportunity to develop the Respondent's International

Department and had told him that he wished him to manage that department and that he would speak to HR to get a contract put in place. The Claimant also confirmed that, shortly after the meeting, Mrs Williamson had telephoned him congratulating him on his appointment, advising him not to tell anyone of the new role as the existing manager had not yet been made redundant.

38. Mrs Williamson's evidence was rather different, noting that the CEO had been enthusiastic about the Claimant's proposal and had invited him to work on it and develop it in order for it to be considered further. However, she denied being asked to put in place a contract for the Claimant and denied congratulating him on his appointment. She confirmed that she was aware that the Claimant had been asked to work further on his proposal and noted that he had come off furlough at the end of August in order to work on it. She also confirmed that she may have suggested that the Claimant keep his proposal confidential within the club's management at that time given the potential impact on his manager.

39. On balance, and particularly due to the complete absence of any documentary evidence, not necessarily in the form of a contract but even in the form of any confirmatory email being sent by the Claimant, I did not consider that the Claimant had been appointed to run the Respondent's International Department at this time, and that he had only been invited to work on that proposal with a view to it being implemented if thought acceptable.

40. On 30 September 2020, Mrs Williamson wrote to the Claimant noting that due to the economic climate and the adverse effect of the Covid-19 pandemic, the Respondent was unable to fund the International Department and had made the decision to close it. The letter confirmed that, in the circumstances, the Respondent would only be able to offer one more one month-long extension to the contract and that it would not thereafter be renewed further and would end on 31 October 2020.

41. The Claimant contended that Mrs Williamson had spoken to him after he had received that letter telling him that it did not apply to him, that he would be treated differently to other employees, and that the Respondent would either accept his proposal and employ him as manager, offer him alternative employment, offer a settlement, or go through a redundancy process with him.

42. Mrs Williamson confirmed that she had spoken to the Claimant on 30 September, and had noted that he would be treated differently to the other coaches, but that that was because he had over two years' service and

therefore had a right to a redundancy payment. She accepted that she might have tried to reassure the Claimant on the basis that his proposal might be accepted or that something else may have come up by way of alternative employment, but stated that she did not say that the letter of 30 September 2020 could be ignored.

43. Again, primarily due to the absence of any documentary evidence which would contradict or undermine the content of the letter of 30 September 2020, I considered that the situation reached was as outlined by the Respondent.

44. Subsequent to the letter of 30 September 2020 and the conversation between the Claimant and Mrs Williamson, the Claimant exchanged emails, principally with Mr Jenkins, surrounding his proposal. The Claimant sent a copy of his proposal through by email on 2 October 2020 and sent an updated proposal on 2 December 2020. Mr Jenkins replied to the latter email, on 4 December 2020, asking the Claimant to leave the proposal with him for a few days and that he would get back to him once he had a chance to fully consider it. Mr Jenkins then wrote to the Claimant, by email on 18 December 2020, noting that he had considered the proposal, but that unfortunately, due to the position the club found itself with the continuing ravages of Covid-19, the Respondent was unable to consider any investment in new or speculative opportunities at that time. He confirmed therefore that the Respondent would not be taking the proposal forward.

45. The Claimant contended that he had still been employed by the Respondent at this time in relation to his proposal, whereas the Respondent contended that the Claimant's employment had ended on 31 October 2020 and, whilst the Claimant had worked on his proposal after that time, he had done so in his own time. The Claimant contended that the content of an email sent to him by Mrs Williamson on 6 January 2021 confirmed that his employment was in existence until then. However, that email simply attached a settlement agreement, which had been discussed between the Claimant and the Respondent, and which both parties agreed could be disclosed to me. It did not give any indication that the Claimant's employment might have continued beyond 31 October 2020.

46. On balance, I concluded that the Claimant's employment had indeed ended on 31 October as indicated in Mrs Williamson's letter of 30 September 2020.

Conclusions

47. Applying my findings to the issues identified at the outset of the hearing, my conclusions were as follows.

48. As indicated in my findings, I was satisfied that the Claimant had been employed by the Respondent from August 2017 onwards on a succession of fixed term contracts. I was also satisfied that the Claimant had openly and validly entered into those fixed term contracts, including the first entered into in August 2017, and that that contract properly and effectively replaced the Claimant's original contract entered into in February 2016. I was satisfied that he, along with his colleagues, had agreed to enter into the fixed term contract in August 2017, and had subsequently agreed to enter into the successive fixed term contracts over the subsequent two years until 31 July 2020, and then for the subsequent three months.

49. I also did not consider that the Chinese Partners from time to time had operated as agents of the Respondent. The contractual relationship between the Respondent and the various partners was clear, and expressly stated that the Chinese Partners were not agents for the Respondent at any time. Notwithstanding that the Claimant kept in touch with his line manager during his time in China, and also that he reported back to the Respondent in the UK in August of each year, I considered that there was a separate and effective contractual relationship between the Claimant and the relevant Chinese Partner from time to time operating under Chinese law.

50. With regard to the ***Autoclenz*** argument, I noted that the Respondent argued that the ***Autoclenz*** judgment was not helpful as a precedent as it related to employment status and not the question of which employment contract applied and which terms applied. I did not agree with the Respondent's contention and I noted that the EAT, in ***Dynasystems for Trade and General Consulting Limited -v- Moseley*** **(EAT 091/17)** and in ***Clarke -v- Harney Westwood and Riegels*** **[2021] IRLR 528**,had concluded that it could be appropriate to look at the underlying factual position, as opposed to the overarching contractual documents, to assess the identity of the correct employer when there was dispute about that. I concluded that a similar approach could be taken in a case such as this, and that it could be conceivable that contractual documents entered into by a claimant might not reflect the underlying position between the parties.

51. However, I was satisfied that the written contractual documents, both those entered into between the Claimant and the Respondent, and those entered into between the Claimant and the respective Chinese Partners, did reflect the agreement between the parties. Whilst the Claimant had been recruited

by the Respondent alone on the basis that he would be paid a salary of £19,000 per annum, I considered that the prospect of that contract being replaced, by a fixed term contract with the Respondent and separate concurrent contracts with the various Chinese Partners, was openly and validly entered into by him, and similarly that the extensions to those fixed term contracts were also openly and validly entered into by him.

52. The initial fixed term contract was preceded by a letter sent to the Claimant by the Respondent's Head of Human Resources, noting that a meeting would be held to discuss the proposed variation with a view to seeking the Claimant's agreement. There was no indication other than that the Claimant agreed to enter into the revised arrangements from that point on.

53. As also noted in my findings, I concluded that the Claimant's employment ended on 31 October 2020, upon the expiry of the last one-month extension of the fixed term contract. He was not consequently entitled to any additional notice of termination.

54. With regard to the Regulation 8 point, the wording of the Regulation is clear and specifies that it applies where an employee is employed under a fixed term contract, which has been previously renewed, and where the employee has been employed under the fixed term contract for a period of four years or more. In this case, the Claimant was employed under successive fixed term contracts from 1 August 2017 until 31 October 2020, i.e. some way short of four years. In my view therefore Regulation 8 had no effect.

55. Turning to the unauthorised deduction from wages claim, as I have concluded that the Claimant had validly entered into the relevant contracts with the various Chinese Partners, that there was no agency relationship between any of those Chinese Partners and the Respondent, and that there was no liability therefore on the part of the Respondent in respect of any underpayment by any Chinese Partner, I concluded that the Claimant's claim must fail.

56. In relation to the months for which the underpayments were claimed, it would, in any event, have been likely that no claim earlier than March 2020 would have been able to be compensated for due to the direction provided by the EAT in the case of ***Bear Scotland Limited -v- Fulton*** **[2015] ICR 221**, as, prior to that there was a three-month gap during which the Claimant appeared to have received his full entitlement.

57. My view on the Claimant's unauthorised deductions claim also applied to the Claimant's claims in respect of the period from March 2020 onwards. As

I have already indicated, I did not consider that the Respondent was under any obligation to rectify any lack of payment made from the relevant Chinese Partner, and there was no separate agreement reached between the Claimant and the Respondent in respect of the wages he was due to receive from the Chinese Partner during that period. I noted that the Respondent had only claimed for furlough payments in respect of the Claimant referable to his salary received from the Respondent, on the basis that it would have been inappropriate to have claimed for reimbursement of furlough payments in respect of a salary that it was not required to pay.

58. Turning to unfair dismissal, it was agreed between the parties that redundancy was the reason for dismissal and that is clearly a potentially fair reason within Section 98 of the Employment Rights Act 1996. I also noted that the Claimant accepted that, in the circumstances that prevailed at the time, the Respondent's conclusion that its International Development Department should be closed down was a reasonable one.

59. In my view, that concession was sensible. It was not my place to question the Respondent's commercial decisions but, in view of the reduction in the Respondent's income from March 2020 onwards, the closure of the International Development Department to save costs was certainly a decision open to it in the circumstances.

60. The focus of the Claimant's claim fell therefore on the consultation undertaken with him and on the search for alternatives to redundancy.

61. With regard to consultation, there was no direct evidence put before me, whether in writing or orally, of any element of formal consultation. However, I noted that the fixed term contract was extended for three consecutive one-month periods during the months of August to October, with a view to enabling the Respondent to assess the action that needed to be taken. I was satisfied that the position as it prevailed in relation to the International Department was clear and obvious to all concerned and underpinned the extensions of the fixed term contract.

62. In addition, the Claimant first put forward his proposal about how the International Development Department could operate in the future towards the end of August 2020, and he met the CEO to discuss that at that time. I was satisfied that, whilst the Respondent was ready and willing to discuss the Claimant's proposals, that was with the backdrop of the department otherwise closing down if the proposals were not acceptable. The Claimant was then effectively given a further month's extension from 30 September to 31 October before his employment ended.

63. Ultimately, I was satisfied that sufficient consultation over the proposed closure of the department and its impact on the Claimant had taken place. If I am wrong about that, I would, in any event, have concluded that the situation faced by the Respondent was so stark that no consultation would have made any difference to the outcome.

64. With regard to the search for alternative employment, it was clear from the Respondent's evidence that there were no alternative positions available within its organisation at the time, it having undertaken several redundancies, not just those involving the International Department at the time. Any alternative that might have been available was therefore only to be found in the Claimant's proposal in relation to the International Development Department, and once the Respondent had taken the decision not to adopt the Claimant's proposals then there was no alternative to his dismissal. Notwithstanding that the Respondent's decision on that did not take place until some time after the Claimant's employment ended, I did not consider that that impacted on the fairness of the Respondent's actions in relation to the search for alternative employment by the time the Claimant's employment ended on 31 October 2020.

65. Finally, with regard to holiday pay, the Claimant's claim revolved around his contention that he remained in employment in November and December 2020, and then would have been entitled to three months' notice from 6 January 2021, which was the date on which he said he became aware that the Respondent was terminating his employment. As I have found above, I did not consider that the Claimant's employment extended beyond 31 October 2020, and therefore there was no question of any accrual of holiday beyond that point. The Claimant accepted that he had taken all holiday accrued to that point, and therefore his claim in respect of holiday pay also failed.

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Employment Judge S Jenkins
Dated: 24 September 2021

JUDGMENT SENT TO THE PARTIES ON 27 September 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS