Appeal No. UKEATS/0007/14/SM

EMPLOYMENT APPEAL TRIBUNAL

52 MELVILLE STREET, EDINBURGH EH3 7HF

At the Tribunal
On 24 October 2014

Before

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

(SITTING ALONE)

MR STEPHEN MULLIGAN — APPELLANT

UNIVERSITY OF EDINBURGH — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR STEPHEN MULLIGAN (The Appellant in Person)
For the Respondent	MR BARRY NICHOL (Solicitor) Anderson Strathern LLP 1 Rutland Court Edinburgh EH3 8EY

SUMMARY

UNFAIR DISMISSAL

Three appeal points remained after others were dismissed at a Rule 3(10) hearing. They were rejected. An Employment Tribunal could not be expected to consider issues which had not been clearly presented as such to it, when ruling on the very issue which had been identified before it as the relevant issue.

Nor did its conclusion on a point about sickness absence indicate that it had wrongly mixed up a version of the employer's attendance policy at the relevant time with a later edition.

Nor was it obliged to consider the resources and size of the undertaking where no point had been made to it that they were such as to make dismissal unfair because it was said an alternative of redeployment should and could have been imposed. That point was not made, and an Employment Tribunal did not in the context of this case have to raise it for itself. It gave sufficient Reasons why it thought dismissal was not unfair.

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

1. For Reasons given on 2 April 2013 a Tribunal at Edinburgh (Employment Judge Strain, Mrs Taylor and Mr Nisbet) found that the Claimant had not been unfairly dismissed. It dismissed other claims that he had made too: so far as relevant to this appeal, the claims that he had been discriminated against on the basis of his part-time status contrary to the **Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000** and that he had been denied annual leave when he was refused an alternative period of leave, having been sick during what would otherwise have been his annual leave period.

2. All other grounds of appeal in what was initially a fairly lengthy Notice of Appeal were rejected on the sift (except for three matters which at a Rule 3(10) hearing, Lady Stacey regarded as fit for consideration at a full appeal).

3. Those three matters need to be put into context, but I shall be brief.

4. The Claimant worked as a part-time security officer in the Accommodation Services Department of the Respondent university. He worked shifts which, at the time of his first claim, brought while he was still in employment, were said to be worked over three days for four-and-a-half hours, two days for seven hours, and two days for nine-and-a-half hours. On the days he worked nine-and-a-half hours he worked a five-hour shift from 9am to 2pm and a four-and-a-half hour shift beginning at 5.30pm.

5. Various bones of contention arose between him and the university. They first related to a parking fine for which he was refused reimbursement, in respect of which he raised a grievance,

which passed through stage 2 where it was refused in November 2010, and stage 3, refused in February 2011. Next, when he tried to cancel pre-arranged annual leave in February 2010 that was refused, to his disappointment. In February 2010 he said that he had hurt his back whilst conducting a cash run, in respect of which he was absent from work from 6 to 22 February. He raised a grievance in August 2010. The grievance was not upheld.

6. In September 2010 he claimed, so the Tribunal found, to have been sick whilst he was on annual leave earlier that year in June. A request to treat that period as sick leave was refused. It was said that he had not made the request in accordance with the university's required procedures.

7. He was refused payment for attending a stage 2 grievance procedure meeting in January 2011. He agreed to work during the royal wedding in April 2011 but then declined to do so without first telling his Security Manager, Mr Boyle. In August 2011 he complained that the Respondent writing to him at his home address was a breach of his privacy. There were further incidents in July relating to his claim that he should be allowed to take sick leave in respect of periods of sickness whilst on annual leave. On 8 July that arose when he told Mr Boyle that he had been ill when on leave between 4 and 8 July. The period between the 4th and the 8th was refused, though that after the 8th, the date of notification, was accepted.

8. Then on 15 August 2011 he was discovered by the acting supervisor to be in a staff room when her view was that he should have been on barrier duty. The barrier was unmanned: he should have been manning it. He refused to carry out her instruction to go to the barrier and threatened her with violence.

9. A colleague also complained in August that he was taking too long on the cash run.

10. Finally, on 1 September he was suspended, the university having formed the view that, after this chapter of events, it had lost all confidence in him as an employee. It was on that basis that on 13 September he attended a hearing. He was dismissed on 15 September following this, for what the employer thought was a breach of the trust and confidence that they should have had in them. They thought he had forfeited that trust and confidence. An appeal was refused on 12 December following an appeal hearing on the 8th.

11. Three claims were made to the Employment Tribunal. The first, begun on 12 September 2010, made a number of complaints, all bar one of which were rejected or discontinued, because the Claimant accepted on reflection that the Tribunal did not have jurisdiction to consider them. The one which remained concerned his part-time worker status. It was expressed in his claim as his fifth complaint, that:

> **"The full-time members of on an evening shift [sic] worked only eight hours. I am part-time and this means I am expected to work 9.5 hours in the one day. This is deferential treatment [sic] if not unequal treatment."**

12. Of the two subsequent claims the first was made on 14th. November 2011, and the second on 13 December 2011, just after the appeal hearing had been heard.

The Tribunal Decision

13. Again summarising, the Tribunal accepted the evidence put before it by the university's witnesses in preference to the evidence tendered by the Claimant. It concluded that the university had genuinely dismissed the Claimant for some other substantial reason, that being a total loss of trust and confidence in him. It concluded that the sole reason for the suspension on 1 September was to investigate the breakdown in the relationship and bond of trust and

confidence, as alleged against the Claimant. It concluded that the reason for dismissal was this loss of confidence. It did not consider that the Claimant had been dismissed for anything other than the reason stated by Mr Gillespie, namely that there had been a breakdown in the bond of trust and confidence (see its Decision, internal page 31, between lines 1 and 4).

14. The three matters which remained after a Rule 3(10) hearing before Lady Stacey on 24 January this year were expressed by her in her Judgment in these terms:

> **"(1) Part-time working. Mr Mulligan told me that his hours on one day a week were 12 noon to 5pm, then a half-hour unpaid break, then 5.30 till 10. The ET did not appreciate that and thought the hours were 9am to 2pm and then 5.30pm to 10pm. It may be the ET misunderstood the position and based their decision on an incorrect material fact.**
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> **(2) Holiday pay and sick pay. According to Mr Mulligan the ET misunderstood his complaint about the correct procedure if he took ill when on holiday. He maintained that the policy had been changed as a result of his case. If I understood him correctly, he said that he had copies of the differing policies.**
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> **(3) I was left with a degree of unease about the ET's consideration of the reasonableness of the dismissal in all the circumstances in that Mr Mulligan said that he thought he had submitted that a lesser sanction and deployment in another part of the Respondent's estate had not been considered by the Respondent when it should have been. He was frank in telling me that he could not be certain that he had made that point at the ET but he thought that he had."**

General Observations

15. The jurisdiction of the Employment Appeal Tribunal lies on a point of law only. For that reason it is not open to the Tribunal to consider complaints about facts, at least where the Employment Tribunal has some evidence which may support the facts it finds. Secondly, because it is necessary for an appeal to succeed that an error should be found in the Tribunal's reasoning or procedure, it cannot succeed where an argument is raised for the first time on appeal which has not been raised before the Tribunal. Although in retrospect it may be obvious that some arguments could and perhaps should have been raised, a Tribunal can only be expected to consider the arguments which are put before it and the issues which are identified by the parties which appear before it. It is for that reason that, particularly where party litigants are concerned, Tribunals often go to considerable pains to conduct Preliminary Hearings. They

identify the issues, as raised by the parties, which the parties think will resolve the claims between them. Where the parties have been before Preliminary Hearings and the Judges at those hearings have identified the issues, then it is to be expected that the Tribunal hearing the eventual case will look at and examine those issues. It will often also ensure, with discussion between the parties at the outset of the hearing, that those truly are the issues which are to be decided.

16. In the present case the first ground identified by Lady Stacey argues that the Tribunal did not appreciate the shift pattern which in fact he was working.

17. The issue which was set out by the Tribunal as Issue 2 was in these terms:

> **"Whether the Claimant was treated less favourably by the Respondents than they treated a comparable full-time worker by reason of being required to work a 5 hour shift from 9am-2pm and a 4.5 hour shift from 5.30pm-10pm within a 24 hour period and neither of which shifts included a paid break in circumstances in which such treatment was not justified on objective grounds and thus the Respondents discriminated against the Claimant contrary to the provisions of Regulation 5(1) of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000."**

18. It was that issue which the Tribunal proceeded to determine. That had been the shift pattern about which the Claimant had complained in his first ET1 in the words which I have quoted. His argument, however, is that the Tribunal could and should have appreciated that, by the time that he came to be dismissed, his shift pattern had changed. He had mentioned this in his third claim when he made two complaints: that he had been unfairly dismissed and that he was owed holiday pay, neither of which related directly to his shift pattern. In setting out the background under paragraph 5.2 of the ET1, he made reference to the changes to the hours which he was expected to work on cash run days. They effectively made for a ten-hour day, since he had to work from 12 till 5pm, take an unpaid break for half an hour, and then begin at half past five, working till 10pm. He compared this working pattern with that of full-time staff,

whose shift began at 2.00 and ended at 10pm. In their case they worked for 9.5 hours, as did he. They worked therefore with half an hour break, just as he had between finishing the first shift at 5.00 and starting the second, but they were paid for that half-hour break and he was not.

19. It is this that he considers the Tribunal missed in dealing with his claim. I have to ask what argument was put in respect of that issue before the Tribunal because, as I have pointed out, a Tribunal can only be regarded as being at fault if it did not address the issues and arguments which were fairly and squarely placed before it. The issues in the case were, as I have said, identified at the start by the Tribunal. But there was a considerable history in getting to that point which involved a number of Preliminary Hearings.

20. Before Judge d'Inverno on 21 April 2011 an issue was identified as being the remaining issue from the first ET1 in precisely the same terms as later was to be considered by the Strain Tribunal. On 14 July 2011 Employment Judge Mellish, in a further Pre-Hearing Review, repeated those words (paragraph 4 of his note). He identified, under the heading of "Claimant's submissions" that the Claimant then was asserting that there had been a change of shift pattern on Tuesdays and Fridays. He complained that at the time of the original claim the cash run was on a Tuesday and Friday morning. It had changed, and he had to work a full five hours from 9.00 until 2.00, returning at 5.30 to work till 10.00. That had been subsequently changed so that he now worked from 12.00-5.00 and then from 5.30 until 10.00. He complained that the previous arrangement had been unreasonable, but he still felt he was being treated less favourably under the new arrangement.

21. That note, and those observations, were available to Employment Judge Craig who combined the three claims at a subsequent case management discussion. The claim in which

the reference to the shift pattern had occurred was, as I have pointed out, not a claim in respect of discrimination relating to the **Part-Time Workers Regulations**. It was a claim in respect of unfair dismissal and holiday pay, the relevance of the hours worked being in support of an argument that he had been automatically unfairly dismissed. He tells me, in submissions which were frank and open, that he had decided not to proceed with that particular plank of that claim. He regrets having taken that decision, but he had taken it.

22. The matter came again before Judge d'Inverno on 6 March 2012 for a case management discussion. In a note following his decision he set out the issue in very much the same terms as it eventually appeared before the Tribunal. There was no reference in what he said to the change in shift pattern.

23. Judge Porter held a further hearing in this case to consider an application by the Claimant to amend the first of the claims. That was the claim in respect of which the only outstanding matter was the issue which I am discussing. She identified the claim and noted that he sought to amend it by introducing new factual claims of less favourable treatment. She refused that application. It follows that after the hearing before her the issue remained as it had been stated by Judge d'Inverno and as it was later to be recognised by the Strain Tribunal.

24. Before the Strain Tribunal, from which this appeal comes, there was further discussion of the issues. That is apparent on the face of the Decision because, between pages 2 and 3, a fifth and sixth issue were added to the four which had previously been identified. The Tribunal noted that they had been added following a submission by the Claimant on the first day of the Merits Hearing. It appears that there had been active discussion between the Tribunal and the parties as to what the issue should be. Therefore I can take it that at that time it would have

appeared to the Tribunal that the Claimant fully accepted that the issue in respect of his shifts and in respect of less favourable treatment on the basis that he was a part-time worker was that set out at issue 2, which I have quoted. There was no issue which related to a different shift pattern. The Claimant points out, correctly, that there were papers by way of production put before the Tribunal which set out the shift pattern. Those shift patterns showed that on Tuesdays and Fridays there had been a change in 2011 leaving just half an hour between the first shift and the second shift to be worked that day. However, that is not the same as making an argument, or advancing a case, before the Tribunal. The Tribunal, in my view, cannot be blamed for having looked at the issue as agreed by the parties and carefully identified through a series of Preliminary Hearings of one form or another, when the Claimant knew that he could or might rely upon a different shift pattern and did not, at the time of the hearing, clearly identify that that was what he wanted to do. It is too late to raise this after the Tribunal has given its Decision.

25. The argument which the Claimant makes is that, in **Hutchison v Calvert** [2006] EAT 0205/06, it was said that the Employment Tribunal must take into account the true nature of the facts. The times of the shifts were incorrectly recorded in the Tribunal's Judgment. He submitted therefore that, in this way, the Tribunal had based its decision upon what was a material misconception of fact. It is not a misconception of fact for a Tribunal to identify the issues as agreed by the parties. They may not be the issues which, on reflection, truly relate to what has happened. But a Tribunal cannot be blamed for dealing with the evidence on the basis of what the parties put before it.

26. Having been taken through the detail of what had happened running up to this hearing by Mr Nichol, and looked for myself at the way in which the Tribunal dealt with the issue, I am

satisfied that the Tribunal dealt with the issue in respect of part-time worker discrimination which was put before it. It gave an answer to that issue, which was in accordance with the law and which cannot now be overturned on appeal. The Tribunal did not have to consider the separate question whether, if a different shift pattern had been considered for the two days per week, it would have thought first that the Claimant was in the same circumstances as a full-time comparator and second that he did not have the half-hour break paid for, as a full-time worker would, because of his part-time status.

27. So far as a link between that issue and dismissal is concerned, in any event the Tribunal had said clearly at the top of page 31 that the basis for dismissal, the sole reason for dismissal, was that of the breakdown of trust and confidence which Mr Gillespie had identified.

The Second Ground

28. The Tribunal faced a claim that the Claimant should have been permitted to take annual leave when, during a period of existing annual leave, he had actually been sick. The Respondent's case was that he could only do so if he told his employer at the time that he was sick. The policy which applied during the relevant periods with which the Tribunal was concerned changed. But it remained the same, the first policy, during the relevant period.

29. Paragraph 4.7 of that annual leave policy was headed "Sickness during annual leave" and read as follows:

> **"Where an employee has an authorised period of Annual Leave, but subsequently falls ill for part or all of that Annual Leave period, the days on which they are ill may be classed as sickness absence, so long as the employee provides appropriate self certification or medical certification as stipulated in the University's Absence Management Policy. In these circumstances, occupational sick pay will be paid in line with the employee's contractual entitlement.**
>
> **The Annual Leave entitlement which the employee would otherwise have used should be taken at a later date as Annual Leave."**

30. The change in wording, although it may perhaps be no change in policy, was to amend that to read this:

> **"Where an employee has an authorised period of Annual Leave, but subsequently falls ill for part or all of that Annual Leave period, the days on which they are ill may be classed as sickness absence, so long as the employee follows the same reporting requirements as if they were due to attend work for that period. They should also provide the appropriate self certification or medical certification as stipulated in the University's Absence Management Policy."**

It then continues as did the previous wording.

31. The reference to the university's Absence Management Policy was amplified before the Tribunal by reference to a memorandum of 18 July 2011 from Mr Boyle to Mr Mulligan. That contained the requirement that managers must be informed of an absence at the earliest opportunity. It added:

> **"Employees who are going to be absent from work due to illness should contact their manager or other designated person by phone. This should be done as promptly as possible and ideally by the time they would ordinarily have started work on that day."**

32. The Tribunal dealt with the question of alternative leave at page 31 of its Decision. It said this, so far as material:

> **"Whilst the Tribunal had some reservations with regard to the clarity of the wording of the Annual Leave Policy, when considered together with the Absence Policy and Mr Boyle's memo and explanation to the Claimant it was evident that the Claimant had failed to notify the Respondents at the earliest opportunity in accordance with their Policy. This meant that the Claimant should have informed his manager by the time he would have ordinarily started work on that day on each occasion he had sought to cancel planned leave. He did not do so. His attempt to do so in June 2010 was made in September 2010, some 11 weeks after it had occurred. His attempt to do so on 8 July 2011 was made after his leave had commenced and he sought to backdate it to 4 July 2011. Mr Boyle was entitled to reject his claim for backdating. Significantly, his claim for 8 July onwards was allowed."**

That finding related back to its findings in fact at page 6 internal, lines 20-29, under paragraph 2(13).

33. The Claimant did not pursue before me the argument which plainly he had put in greater detail before Lady Stacey that the change in the wording of the policy demonstrated that he

should have been permitted to take alternative leave when he was not. Before me he rather argued that, in line 26, at page 31 internal the Tribunal had conflated the two policies. The expression "sought to cancel planned leave" was one which appeared to him to come from the new policy and was not clearly and properly addressing the old policy, which was that that applied to him.

Discussion

34. The first question for me here is whether the Tribunal, in reaching the Decision it did, was entitled to reach the factual conclusion it did. As to that, there has been no argument here although there was a dispute below. Mr Nichol is right to say the Tribunal was entitled, on the evidence before it, to come to that conclusion. But more importantly, I have to ask whether the Tribunal were addressing the old policy or whether they had impermissibly mixed up the two.

35. Reading what the words say, it seems to me that the Tribunal were addressing the first and appropriate policy. The first sentence of the quotation which I have set out above shows that it was looking at the annual leave policy in its first wording. It took it together with the absence policy and Mr Boyle's memo and explanation. It then used the words "this meant...", which shows that it was that policy which the Tribunal was interpreting. The conclusion that the Claimant should have informed his manager by the time he would ordinarily have started work on each day when he sought to cancel planned leave and claim it as sick leave was entirely in line with the memo from Mr Boyle, which was part of the consideration of the Tribunal and which related to the original wording. Accordingly I do not see here that the Tribunal has acted impermissibly. It was entitled to come to the conclusion it did. It was not in error in so doing.

36. In the course of his argument the Claimant argued that the Tribunal in this respect had applied the wrong law. The Claimant was attempting to claim his right under the **Working Time Regulations 1998**, Regulation 17, and not solely under sections 45A and 101A of the **1996 Act**. Regulation 17 provides for "Entitlements under other provisions" as follows:

> **"Where during any period a worker is entitled to a rest period, rest break or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period, break or leave during that period, take advantage of whichever right is, in any particular respect, the more favourable."**

37. This permits a worker to take advantage of whichever is more favourable to him either that provided for by the **Working Time Regulations** or that provided for by his own contract with his own employer. I do not see that this provision has anything to add to the discussion which the Tribunal had on the argument as it was put before it in respect of this particular aspect of the case.

The Third Issue

38. The third issue relates to the sanction of dismissal. It is said that the Tribunal did not, but should have, considered whether the Claimant could have been deployed elsewhere within the university estate. When a Tribunal considers whether a dismissal is unfair, it examines the question of fairness by applying the words of section 98(4) of the **Employment Rights Act 1996**. They are familiar but in this context deserve restating:

> **"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."**

39. What the Tribunal did was to say as to dismissal that it was evident that the Claimant had simply refused to engage with the university as his employers, to utilise their procedures and to accept any direction with which he did not agree, that he had clearly adopted a "he knows best" approach. His procedure of raising matters, then dropping them, then raising them again before the Tribunal was unreasonable. It commented:

> **"The Tribunal had no hesitation in accepting Mr Gillespie's evidence and, it must be said that, of the Respondents' other witnesses, such as Mr Boyle. There was a genuine belief that the relationship with the Claimant had fundamentally broken down by virtue of the breakdown in the bond of trust and confidence and that this reason was not whimsical or capricious. Having considered that the reason for the dismissal was substantial and accordingly a potentially fair reason, the Tribunal went on to consider whether or not dismissal was within the band of reasonable responses. It was clear from the evidence of the Claimant during the course of the Tribunal and consistent with both parties' evidence as to what was said during the disciplinary meeting and subsequent appeal, that the Claimant simply did not accept that there had been a breakdown in the relationship and that he retained trust and confidence in the Respondents as his employer. That being said, he did not accept that he was to any extent in the wrong, or indeed that he required to modify his behaviour. Accordingly the Respondents were left with no option other than to dismiss."**

40. The relevant facts which it found which might be said to touch on this issue were set out at paragraph 2(44) at internal page 14 of the Tribunal Decision. So far as material, they were that at the disciplinary meeting the Claimant was given every opportunity to put his case forward. He refused to accept any wrongdoing or deficiencies on his part. The Tribunal then found this as a fact:

> **"The Respondents considered the Claimants' disciplinary record, length of service any alternative to dismissal but formed the view that in light of the Claimant's failure to acknowledge any fault on his part there was no alternative. Accordingly, the outcome of the meeting was that the Claimant was dismissed..."**

41. In dealing with the appeal, on the same page, now internal page 15 at paragraph 2(48), the Tribunal noted that the Claimant was given every opportunity to put his case forward at the appeal, but it was evident that there had been a breakdown in the bond of trust and confidence. It found as a fact that, "Once again the Claimant failed to accept any fault or wrongdoing on his part."

42. That finding, as to the view of the employer that there was no alternative to dismissal because the Claimant failed to acknowledge any fault on his part, was echoed in the findings at paragraph 4 on page 25, from which I quoted above. What the Tribunal did not do was ask itself whether the size and administrative resources of the employer's undertaking made the decision unreasonable. The Claimant did not suggest that he argued before the Tribunal that he should have been deployed to another post. He was surprised that redeployment was not explicitly covered in the Judgment, though he did refer to the case of **A v B**. In **A v B** UKEAT 0206/09, a Decision of the Tribunal chaired by Underhill J as President, the Tribunal said, paragraph 31, that it had observed a growing trend among parties to employment litigation to regard the invocation of loss of trust and confidence as an automatic solvent of obligations. It was not. In a footnote he pointed out that, in the context where the language of trust and confidence was most well established, that is of constructive dismissal, the question was not whether it had been destroyed or seriously damaged, but whether the breakdown was as a result of unjustifiable conduct on the part of the employer. It was necessary in the case before him, he thought, to go behind the simple question, whether it had broken down. Accordingly, argued the Claimant, the Tribunal here could and should have considered the question of redeployment. It should not automatically have thought that a loss of trust and confidence made him unemployable elsewhere on the university estate. In his Skeleton Argument he argued that the university had not shown that it was impossible to continue to employ the Claimant. I observe in respect of that that is a sentence which places a burden on an employer to justify the dismissal as being fair. There is no such burden. The question of fairness is not a question to be resolved by placing the burden either to show the dismissal was fair or to show that it was unfair on either party. It is, as the law makes plain, a Judgment to be reached by a Tribunal, applying section 98(4), in respect of which there is no burden. The question is one of

assessment, not of burden of proof. The only burden in section 98 rests upon the employer to show what was the reason for dismissal.

43. He argued that there was no evidence before the Tribunal that the employer had considered or offered the Claimant deployment to another part of their estate. Relying on **British Telecommunications plc v Sheridan** [1990] IRLR 27 CA, he argued that a finding could not be made without there being proper evidence to support it. The classic passage in **BT v Sheridan** is that set out at paragraph 31 in the Judgment. In my view the answer to those submissions is that given in this case by Mr Nichol. He pointed out that the Tribunal, in its findings in fact to which I referred above, accepted that the employer had considered alternatives to dismissal. It thought that it was not unfair to dismiss, having done so, because essentially the Claimant would not accept that he had been at all at fault. Its Judgment on the question of reasonable responses might be thought to be concise. It could perhaps have been developed in greater detail. But it did convey the essence of why the Tribunal decided as it did and why it thought that what the employer did was not unfair. No point had been raised before it that the size of the university was such that the only fair result would be for the university to redeploy the Claimant to another post, particularly when it was not that for which he was actually arguing before the Tribunal.

44. Accordingly, as it seems to me, the Tribunal has come to a conclusion which was within its entitlement to reach. It expressed it in sufficient detail. It did not set out, in doing so, any fact which was wrong. It did have evidence which it accepted, that the Respondent had considered alternatives to dismissal, though it does not set out in any detail what those alternatives actually were. I do not think that in this case it needed to do so.

45. It follows that on each of the three arguments, despite the careful and respectful way in which Mr Mulligan put forward his submissions, the appeal must be rejected for the reasons which I have given.