EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr A Holdcroft	**v**	**Rehabworks Limited**

Heard at: **Bury St Edmunds** **On: 15 - 17 January 2018**

Before: **Employment Judge Laidler**

Appearances

For the Claimant: **Mr A Webster of Counsel**

For the Respondent: **Mr J Crozier of Counsel**

RESERVED JUDGMENT

1. **The claimant was dismissed for 'some other substantial reason' falling within s98(1)(b) Employment Rights Act 1996.**

2. **The respondent acted unfairly within s98(4) in treating that as a reason for dismissal.**

3. **It is likely that the claimant would have been dismissed in any event but the time that would have taken will need to be the subject of further evidence and/or submissions at a remedy hearing**

4. **All other claims fail and are dismissed.**

REASONS

List of Issues

1. The following represents the agreed list of the issues to be determined at this hearing.

Breach of Contract

1.1 Did the parties reach contractual agreement on the terms offered by the respondent's letter of 31 May 2016 (p250)?

1.2 If so, was the claimant entitled to receive a severance payment equivalent to three months basic salary?

Unfair Dismissal

1.3 Was the claimant dismissed for a potentially fair reason pursuant to s98(2)(b) of the Employment Rights Act 1996 ("ERA"), namely some other substantial reason (see para 25, p47) or, in the alternative, capability?

1.4 Did the claimant's behaviour amount to a breakdown of trust and confidence between the claimant and the respondent and, if so, did that behaviour amount to a substantial reason to justify the dismissal of an employee holding the position which the claimant held, as required by section 98(1)(b) ERA?

1.5 In the alternative, did the respondent act reasonably in treating the claimant's capability as a sufficient reason for dismissing the claimant, in that: -

a) Did the respondent make the claimant aware of the problem and give him an opportunity to improve within a realistic timescale?

b) Was the claimant given appropriate support and, if applicable, training?

c) Was the claimant's progress reviewed at regular intervals?

1.6 Was the dismissal of the claimant fair in all the circumstances? In particular, was the dismissal within section 98(4) ERA and the band of reasonable responses available to the respondent?

1.7 Did the respondent follow a fair procedure when dismissing the claimant?

1.8 Did the ACAS Code apply to the claimant and if so did the respondent follow the ACAS Code when dismissing the claimant?

1.9 If the claimant's dismissal is found to be unfair:-

i) Did the claimant's conduct cause or substantially contribute to his dismissal? If so, by what proportion would it be just and equitable to reduce the compensatory award?

ii) Would the claimant have been dismissed in any event? If so, by what proportion would it be just and equitable to reduce the compensatory award?

1.10 If the respondent failed to comply with the ACAS Code, was its failure reasonable? If the respondent's failure to comply with the ACAS Code was unreasonable, is it just and equitable to increase any award made to the claimant?

1.11 To what extent, if any, has the claimant mitigated his losses?

1.12 What, if any, compensation is the claimant entitled to?

Failure to Provide Written Particulars of Employment

1.13 Did the claimant's contract of employment comply with all of the requirements of sections 1 and 4 of the ERA?
The claimant asserts that the contract was not compliant because it purport(s) to contract out of his entitlement to statutory notice at paragraph 19.1(g).

Breach of Contract claim

2. At paragraph 28 of the particulars of claim, it was pleaded as follows:

> "The claimant has not been paid for his notice period. The claimant will say that he is entitled to six months' notice in the sum of £50,000.00 gross. Given the tribunal's limited jurisdiction, the claimant does not hereby make a claim for notice pay and instead reserves his right to make that claim in the Civil Courts."

3. The breach of contract claim that was pleaded as being before this tribunal was set out at paragraph 31 where the claimant claimed "that he is owed a contractual severance package of three months' basic salary".

4. The Judge queried with Counsel how it was proposed that the factual background with regard to the contracts of employment be dealt with in this hearing. It is a fact that there were various service agreements and findings with regard to those will need to be made. Having taken instructions, Counsel for the claimant agreed that the 17 May 2016 contract applies to these proceedings save that the claimant reserves his position with regard to the duration of the notice period and that this tribunal does not need to make any findings with regard to the length of notice. Clause 19.1.g relied upon by the respondent was in that contract. It is the lawfulness of the dismissal that is in issue.

5. The respondent took no issue with that but clarified that there may be other clauses in the contract that it would wish to take the claimant to. It

was agreed that it was the length of notice that the tribunal did not need to make any findings on.

The evidence of Gregory Kane

6. Mr Kane attended to give evidence on behalf of the claimant. It was raised with the tribunal by Counsel for the claimant that Mr Kane had been employed by the respondent but no longer was. Counsel for the claimant was not instructed by him and could not advise him but it appeared that it may be the case that there was an agreement between Mr Kane and the respondent regulating Mr Kane's departure. Neither Counsel was privy to any such documentation however. The respondent advised that it had no issue with the evidence in his witness statement. If, however Mr Kane went further than that, he had to understand that he may then be in breach of some covenants. The Judge therefore explained to Mr Kane prior to the start of his evidence that the tribunal understood he may have some restrictions against him following his departure from the respondent. The respondent took no issue with anything said in his witness statement but if he were to go further than that in his answers to questions put to him, then he may risk being in breach of any covenants to which he may be subject. If he had any doubts, he should raise that with the tribunal. Mr Kane understood the position but did not raise any further concerns whilst giving his evidence.

7. Within the three day listing, there was only time for hearing the evidence and submissions and then the decision was reserved.

8. The tribunal heard evidence from the following on behalf of the respondent:

   Justin Mark Rayner, Finance Director;
   David Mobbs, Chairman of the Board;
   Mark Robert Armour, Clinical Director;
   Robin Hubert Filmer-Wilson, Partner of ArchiMed SA;

9. The claimant gave evidence and Gregory Kane on his behalf.

10. The tribunal also had a bundle of documents containing 379 pages (but with additional inserted pages) and only a small proportion of those were referred to. From the evidence heard the tribunal finds the following facts.

The Facts

11. The claimant commenced employment with the respondent as Commercial Director on 1 August 2011. During September 2011, the claimant was appointed a statutory director. In February 2012, the claimant was appointed Chief Executive Officer of the respondent.

12. The respondent had been a family-run company until 2010 when the first investor group, Sovereign Capital Partners LLP (Sovereign Capital) became involved in the business.

13. In September 2015, the respondent acquired Right Core Care Limited and on 3 September 2015, Kingfisher Bidco Limited acquired the respondent with funds provided by ArchiMed SA. The respondent then became a subsidiary of Kingfisher Topco Limited. The claimant became a statutory director of Kingfisher and other group companies from 3 September 2015.

14. As set out above it has been agreed that the relevant service agreement is that of 17 May 2016. This provided at Clause 19 for Summary Termination:

> 19.1 'The company may terminate the Employment at any time, without notice or pay in lieu of notice, and with no liability to make any further payment to you, save for the amounts accrued due to the Termination Date, if:
>
> …(g) you become prohibited by law from being a director, you are removed from office of director pursuant to the Company's articles of association unless the removal is caused by sickness or injury or you resign as a director other than with the prior written approval or at the written request of the Board or pursuant to clause 24…

15. This agreement also had a clause dealing with Disciplinary and Dismissal Rules at clause 26:

> 26.1 You are subject to the Company's disciplinary rules and procedures in force from time to time which are available from the Company's Chief Executive Officer and such other procedures of this nature as may from time to time be adopted. Application of any such procedure is at the Company's discretion and is not a contractual entitlement.'

<u>The claimant's personal loan to the respondent</u>

16. The minutes of a board meeting for 19 January 2016 recorded under the item of 'Finance' that:

> "It was noted that due to the anticipated… payment not being received and a risk of breaching the bank overdraft that AH over the holiday period had injected £50,000.00 as a short term director's loan. The board wished it to be recorded that this had happened without full board knowledge or consent."

17. Justin Rayner had been appointed as Finance Director of the respondent on 5 January 2015. He had a letter sent to the claimant dated 2 February 2016 stating that following the 19 January board meeting there would be an investigation into the claimant's conduct in respect of the following matters:

> "1. Failure to notify the board of RehabWorks that the company was in the lead up to Christmas in financial difficulties with the risk of insolvency, resulting in

> you making (without notification to or approval of the board) a personal loan to Rehab Works to enable the company to meet its debts as they fell due.
>
> 2. Subsequent to making the loan, your failure to notify the board of the loan and/or the financial difficulties.
>
> 3. Failing to provide summary management accounts to the board in November and December 2015."

18. The letter advised the claimant that if proven, these allegations may amount to gross misconduct but that the investigation did not in itself constitute disciplinary action. Once they had completed the investigation, the claimant would be advised whether he was required to attend a disciplinary hearing.

19. It appears that after the board meeting, Mr Filmer-Wilson (of the investors) had discussed the matter with the claimant and indeed wrote to him by email on 2 February asking him to have the attached letter signed by the appropriate member of the management team. The claimant replied on 3 February stating that Justin Rayner would sign the letter as he was the only other director on site that day (as above).

20. By letter of 4 February, the claimant was required to attend an investigatory meeting on 6 February. This invite came from Caroline Farren-Hines, HR manager of the respondent. That investigatory meeting was chaired by Gregory Kane.

21. The claimant then received a letter inviting him to a disciplinary hearing on 19 February to be conducted by Mark Armour, Clinical Director. He was sent a copy of the investigation meeting notes and a copy of the company disciplinary procedure. He was advised that a possible outcome of the disciplinary hearing could be a formal disciplinary warning up to and possibly including summary termination of his employment. The claimant was advised of his right to be accompanied. It is of note that the claimant was sent a copy of a disciplinary policy although the tribunal did not see that.

22. Caroline Farren-Hines wrote to the claimant on 19 February 2016 with Mr Armour's decision.

23. In relation to the first allegation of failure to notify the board of the financial difficulties, this was founded in part. The comments were:

> "Andy Holdcroft did inform the board with regard to the cash position on 15 December at the board meeting. The subsequent non-payment by Benenden was shared with one member of the RehabWorks Limited board (Greg Kane) however it would have been reasonable to expect other shareholders specifically the investor partners to be notified of the resulting financial position and the subsequent action of making the loan."

24. The allegation that the claimant had made the loan without notifying the board was upheld.

25. The allegation that the claimant had failed to provide summary management accounts to the board in November and December was held to be unfounded. The claimant was issued with a verbal warning. Mr Armour accepted in his evidence to this tribunal that that was the lowest level sanction.

26. There was an email from the claimant of 14 March addressed to "All" in which he asked that they try and sort out the paperwork and facilitate the loan repayment that week. In a letter to him of 7 April, Mr Filmer-Wilson stated he understood that the process for repayment would result in the claimant being in receipt of the funds on or about 30 April. He stated:

> "However, I must reiterate that neither Kingfisher Topco nor any of the investors were consulted by RehabWorks during or in relation to the disciplinary process which resulted in a verbal warning being issued to you on 19 February. It is our position that, in making the loan, you were in breach of various obligations including those which you owe under the Investment Agreement dated 3 September 2015. These are not breaches which are capable or remedy by you. In making the loan you created indebtedness to you which RehabWorks will be refunding."

He stated they were:

> "considering our position further and in the meantime I must make it clear that your breaches are neither waived nor accepted."

27. The Investment Agreement referred to was one dated 3 September 2015 between Kingfisher Topco (and two other Kingfisher companies), the ArchiMed investors and the managers of which the claimant was one. He was taken in cross-examination to Schedule 5 Part II of the agreement which contained "negative covenants". This provided that the company would not without investor consent:

> "11. Make, increase or extend any loan or advance or grant any credit to anyone whatsoever (other than (i) trade credit in the ordinary and usual course of trading; or (ii) advances made to employees against expenses properly incurred by them on the company's behalf.
>
> …
>
> 13. Borrow any money or incur any indebtedness or other liability other than…"

28. The claimant was not prepared to accept there had been any breach by him of clause 11 but conceded that he saw the relevance of clause 13 and believed it could be interpreted that he had been in breach of that. So far as the claimant was concerned however, he had received the verbal warning and believed that was the end of the matter. He continued to work in co-operation with the investors. He did not accept that the letter written

by Mr Filmer-Wilson demonstrated that the matter was still a live issue with the investors but believed that letter was just one of standard practice.

29. David Mobbs joined the respondent as a Director and Chairman in April 2016. In December 2015, he had stepped down as Group Chief Executive Officer of Nuffield Health after 13 years in that role.

Removal of the claimant as a Director

30. By written notices of 31 May 2016:

    30.1. ArchiMed gave notice to Kingfisher Topco Limited that the claimant had been removed as a director,
    30.2. Kingfisher Topco Ltd gave notice to the Respondent pursuant to Article 30.2 that the claimant had been removed as a director of the board with effect from the date of that letter.

31. The tribunal heard from Mr Filmer-Wilson, Partner of ArchiMed, the investor. It was quite clear from both his witness statement and his oral evidence that as early as January, he and the investors had decided that the claimant had to go. However, they needed to have someone else already in mind before they could proceed to his removal.

32. Towards the end of March 2016, they had identified Derek Farrell as a possible candidate for the CEO role. He had already been made redundant and confirmed he would be able to join the Respondent on 1 June 2016.

33. At the end of April 2016, ArchiMed commissioned Deloittes to carry out a market analysis and prepare a strategy paper for RehabWorks. Mr Filmer-Wilson stated in his witness statement (paragraph 26) that they felt the need to engage Deloittes to carry out this exercise as a result of Andy's "lack of strategic leadership". The claimant accepted in evidence that he knew this had been commissioned, did not see a final report but saw a draft discussed at an April board meeting. The tribunal was not taken to this document but was advised it was in the bundle. It is entitled "Workplace Health Strategy – Future Opportunity Discussion – Draft for discussion 11 May 2016".

34. In an email of 17 May, Mr Filmer-Wilson wrote to the claimant stating that he would be in Bury St Edmunds on 31 May and that it "may be worth reviewing Deloitte mission pre-board".

35. The claimant prepared an executive summary report dated 27 May 2016 for that board meeting.

36. ArchiMed having removed the claimant from the board needed one of the respondent's directors to sign off on his dismissal form the Respondent. Mr Filmer-Wilson called Mark Armour during the last bank holiday

weekend of May 2016 and asked him to meet him in the car park of his train station on 31 May.

37. They duly met and Mr Filmer-Wilson notified Mr Armour about the removal of the claimant from the board and then presented him with some prepared letters that would terminate the claimant's employment with RehabWorks with immediate effect.

38. Mr Armour was of course the director who had issued the claimant with the verbal warning. In evidence he stated that once Mr Rayner was in post, the financial reporting improved from January and therefore it was true to say that the position got better after that disciplinary process. If the claimant found and recruited Mr Rayner, he had to take some of the credit for that. It was he said a major surprise when he was told that the claimant had been removed from the board. He did not consider the claimant was doing a bad job at that time.

39. Mr Armour was asked in cross-examination about the manner in which he was asked by Mr Filmer-Wilson to sign the letter of dismissal. He stated that he did not make the decision to dismiss "I carried out the act". He felt that if he had said no, the claimant would still have been dismissed but not by him. He believed the investors would have found a way as once they had decided the CEO was to go, then he would go. He felt that it would not have mattered whether he had discussed it with his other directors or not but he accepted he was "unhappy with the decision". In his view it was futile to discuss with the others. He accepted he went along with the investors' wish. He could not point to any document giving him authority to dismiss without speaking to the board but trusted in the fact that the investors would have explored that authority and presented him with the job to do. His impression was that his authority came from the investors removing the claimant as a director.

40. In answer to a question from the Judge, he confirmed that the respondent would not have just dismissed the claimant if the investors came to him with unethical reasons to dismiss. He would have sought the views of his fellow directors. The explanation however given by Mr Filmer-Wilson that they did not think the claimant had the vision to take the business forward and they had someone else more suited seemed entirely plausible.

41. Mr Armour confirmed that the letter seen at page 248, 31 May 2016, notification of dismissal which he signed had already been drafted and he signed it as it was. This letter stated that the claimant was dismissed with immediate effect because of:

> "(a) Ineffective financial reporting which led to the need to urgently recruit a Chief Financial Officer;
>
> (b) Your inability to deliver on major contracts (specifically APOS and Network Rail). You originally presented these contracts to the investors as evident contracts which had been primary motivators for the investors to invest in RehabWorks;

> (c) The significant staff turnover at a senior level at Rehab Works (PTS and OH service leads) reflecting ineffective senior management; and
>
> (d) Your inability to provide strategic leadership to the business."

42. The letter went on:

> "Accordingly due to your removal as a director of RehabWorks, this letter is to notify you that RehabWorks is terminating your employment without notice or pay in lieu of notice in accordance with clause 19.1(g) of your service agreement dated 17 May 2016."

43. It was put to Mr Armour that therefore when he stated that the claimant had to go because the investors had lost confidence in him, it was not for the reasons listed in the dismissal letter, it was the mere fact that the claimant had been removed as a director. Mr Armour accepted that the reasons set out in the letter did not play a part in his reason for the dismissal. His view however was that the two went hand in hand. The matters listed were indicative of the investors loss of confidence.

44. Mr Armour did not have the claimant's contract of employment in front of him and did not know what clause 19.1(g) said. That paragraph in the dismissal letter was not therefore his primary reason for the dismissal which was the loss of confidence of the investors.

45. Mr Armour accepted that he dismissed the claimant even though he had found it unfounded, in his previous disciplinary, that there had been ineffective financial reporting. He accepted that but stated that "obviously the investors shared a different view to me".

46. Another letter was sent to the claimant on 31 May listing arrangements for the termination including return of property and continuing obligations. Although signed by Mr Armour, it was again not written by him. In that letter, the claimant was reminded that he remained bound by clauses 15 (confidential information), 16 (intellectual property), 22 (obligations after employment), 24 (resignations from appointments), 31 (power of attorney) and schedule 1 (post termination restrictions). The letter then dealt with a severance payment and provided as follows:

> "As a goodwill gesture and subject to and conditional on
>
> (i) you complying with your continuing contractual obligations; and
>
> (ii) your co-operation in an orderly handover and exit from the business RehabWorks is willing to offer you a severance payment equal to three months' basic salary paid on or about 31 August 2016."

47. Mr Armour was asked what of those conditions the claimant had not complied with and stated he was "unsure". He was not entirely sure why the money had not been paid.

Solicitors' correspondence

48. By letter of 10 June 2016, Mundays solicitors advised the respondent they had been instructed by the claimant. With regard to his employment, they stated they had advised that the termination was in breach of the claimant's "implied contractual right to receive minimum statutory notice as the four reasons for termination refer only to alleged issues of performance (rather than conduct)." Bearing in mind they had terminated the claimant's employment such a breach amounted to a repudiatory breach and the claimant accepted that breach "as a result, he is not bound by any of the post-termination provisions in his service agreement".

49. It was further alleged that the respondent appeared to have no fair reason to terminate the claimant's employment and that the respondent had chosen not to follow any fair procedure. The claimant it was alleged had therefore been unfairly dismissed.

50. Dealing then with the severance payment, the letter stated:

> "In the second letter from Mr Armour, you propose a severance payment equal to three months' basic salary payable around 31 August 2016. However, you have already dismissed Mr Holdcroft from the business with immediate effect and he is under no obligation to provide any handover. In addition, and as previously indicated, Mr Holdcroft has been released from any post-termination contractual obligations by virtue of your repudiatory breach of contract."

51. Solicitors RPC acting for the respondent replied by letter of 28 June 2016. It stated that the claimant had been removed as a director of Kingfisher Topco and RehabWorks 'as a result of the companies' serious lack of confidence in his abilities as a director and to act in the best interests of the companies as a result of his conduct taken in aggregate'. Given the company's serious concerns regarding the claimant's performance in respect of his directorship duties, he was removed as a director. As a result of that his employment was terminated summarily pursuant to clause 19.1(g):

> "The reason for the termination of his employment was some other substantial reason, namely that it would be impossible for Mr Holdcroft to effectively and properly perform his duties as a Chief Executive Officer of RehabWorks without being a director of the company. The two roles go hand in hand."

52. The claimant's employment had been terminated summarily without notice or pay in lieu of notice pursuant to his service agreement. It denied any breach of any express or implied terms of the contract stating the claimant remained bound by all and any post-termination obligations. In relation to the severance payment, they stated:

> "We assume from your letter that Mr Holdcroft has decided to reject the company's offer of a goodwill severance payment equal to three months' basic salary. We should be grateful if you would confirm."

53. Mundays replied by letter of 6 July 2016. This letter repeated the arguments raised in the letter of 10 June 2016. It submitted that the claimant had not been lawfully removed as a director and therefore could not be summarily dismissed under clause 19.1(g). It did not specifically address the severance payment.

54. In the letter of dismissal, the claimant was advised that the decision to remove him as a director was taken because of:

> "(a) Ineffective financial reporting which led to the need to urgently recruit a Chief Financial Officer;
>
> (b) Your inability to deliver on major contracts (specifically APOS and Network Rail). You originally presented these contracts to the investors as evident contracts, which had been primary motivations for the investors to invest in Rehab Works.
>
> (c) The significant staff turnover at a senior level at Rehab Works (PTS and OH service leads) reflecting ineffective senior management; and
>
> (d) Your inability to provide strategic leadership to the business."

55. These were the reasons that the investors decided to remove the claimant as a director but were not the reasons given by the respondent. The respondent's decision was taken because the claimant had already been removed as a director. Mr Armour accepted in cross-examination that the letter contained the reasons for the investors' loss of confidence in the claimant. They played no part in his reason for dismissal. In his view though, the lack of confidence that the investors had in the claimant went hand in glove with the last allegation, namely the claimant's inability to provide strategic leadership.

(a) Ineffective financial reporting which led to the need to urgently recruit a Chief Financial Officer

56. The claimant's evidence was that the respondent had employed a Finance Director until February 2015 when he left the business. At the time the business was in the process of being sold and he decided not to appoint a new Finance Director. He was aware that a private equity buyer would likely wish to be involved in appointment to that position. As a qualified accountant he felt he was capable of covering that role on an interim basis. He put that to the respondent's board and the course of action was agreed to. It was agreed with ArchiMed during the buyout negotiations that a Finance Director position would be recruited post-acquisition. The claimant duly commenced that process and a new Finance Director was recruited, namely Justin Rayner, who joined the respondent on 5 January 2016. Mr Armour accepted that the claimant had told him that the board had agreed there was no need to appoint the Finance Director in view of the management buyout and that he did not dispute what the Claimant was

telling him. As already found Mr Armour acknowledged that the claimant should be given credit for recruiting Mr Rayner.

(b) Your inability to deliver on major contracts (specifically APOS and Network Rail)

57. In his witness statement, Mr Filmer-Wilson stated at paragraph 47 that it turned out that APOS could not distribute its products through RehabWorks (they need to distribute their products through podiatrists) and Network Rail could not refer patients to the respondent. He stated:

> "This showed us that either Andy made some big mistakes with these contracts and got it wrong or he misled us to get ArchiMed to invest. These contracts were supposed to generate at least half a million pounds each. But on an annual basis they generate less than £20,000.00 and £70,000.00 respectively."

58. The Claimant dealt with this at paragraphs 31 – 32 of his witness statement. The APOS contract was assigned to Jane Carrington, Sales Director and Mark Armour, Clinical Director and the Network Rail contract to Ms Carrington and Greg Kane, Operations Director. Whilst acknowledging that both contracts were behind targeted penetration and volumes they were both increasing every month. Mr Kane in his witness statement accepted that both contracts failed to yield the volumes the respondent was hoping for but 'there were a multitude of factors affecting their performance'.

59. Mr Rayner who was appointed finance director in January 2016 stated in his witness statement that although he knew before he joined that the business 'had its challenges' he had never expected to 'find the financial situation as severe and disorganised as it was'. He was taken to the Claimant's Executive Summary Report of 27 May 2016 and it was suggested to him that this did not paint the picture he stated. This stated that the group turnover for the month was £59,000 ahead of budget and gross profit for the month £43,000 ahead of budget. The actual group EBITDA (earnings before tax, interest, taxes, depreciation and amortisation) for the month was £37,000 favourable compared to budget.

60. Mr Rayner did confirm that if there had been performance issues with the Claimant there were processes to go through. Those issues would be raised and discussed. He could not recall seeing a company handbook but believed there must be one as the Respondent was had ISO accreditation. If there had been concerns they would have been noted in the minutes of board meetings. The tribunal has not seen any such concerns minuted nor a company handbook.

(c) The significant staff turnover at senior level

61. The claimant in his witness statement believed this was reference to the Psychological Therapy Service lead (PTS lead) and Occupational Health

Service lead (OHS lead) who had left the business due to personal circumstances. Mr Armour explained there were about 120 employees at that time and the reference appears to be about only two of those. Mr Armour explained the OHS lead had been grossly underperforming and there was a mutual agreement for her to leave managed by Mr Kane. Mr Kane in his witness statement believed the Psychological Therapy Service lead had relocated her family to take up the role with the respondent but understood she had made a decision to return home and relocate her family back to the north of England. Mr Armour believed that there had been a difficult relationship between her and Mr Kane.

62. None of these matters were put to the claimant before he was dismissed by Mr Armour.

Relevant law

63. The claimant was dismissed by the respondent and the respondent must show the reason for dismissal and that it was one falling within section 98 of the Employment Rights Act 1996. It must either be one 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. (Section 91(1)(b))"

64. If such a reason is established then it is still necessary to determine whether the dismissal was fair or unfair (having regard to the reason shown by the employer) within the meaning of section 98(4)).

65. Guidance was given by the Court of Appeal in Cobley v Forward Technology Industries PLC [2003] IRLR 706. In that case, the claimant had been the Chief Executive of the respondent for almost 20 years. Following a takeover battle for the company in which he was on the losing side, the new shareholders passed a resolution removing him as a director of the company. Under an express term of his written contract of service, he automatically ceased to be Chief Executive on ceasing to be a director of the company. His contract of service terminated and he was dismissed. Lord Justice Mummery giving the decision of the Court of Appeal stated as follows:

> "21.
>
> In my judgment, however, the employment tribunal did not fall into the error of simply finding that the triggering of the automatic termination provision in the service agreement was the reason for Mr Cobley's dismissal. They also looked at the set of facts, or set of beliefs, which caused FTI to dismiss Mr Cobley. The new board and the new shareholders wanted a fresh board of directors. All the old board, who were non-executive directors, had resigned, leaving only Mr Cobley in office. The new shareholders resolved to remove him. The legal consequence was that his contract of service terminated. As a matter of fact it would be reasonable for the new shareholders to form and act on the view that FTI should not have a chief executive who had been voted off the board. The proposition that a change in the ownership of the shares in a company or in the control of it does

not have a necessary effect on employment relationships between the company and its staff is, in general, correct, but it is always necessary to consider the facts of the particular dismissal. Section 98(1)(b) focuses on the sufficiency of the reason to justify the dismissal of an employee 'holding the position which the employee held'. Mr Cobley held the most important executive position in IFT. In deciding whether there was a substantial reason to dismiss him from that position on a successful takeover different considerations would apply to him than to the case of a secretary or a storeman.

Fairness of dismissal

25.

In determining whether the dismissal of Mr Cobley was fair under s.98(4), the tribunal was required to ask whether, in the circumstances, FTI acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing him and to determine the question of fairness in accordance with equity and the substantial merits of the case.

…

27.

In my judgment, there was no error of law in the decision of the tribunal on the issue of fairness. Dismissal of Mr Cobley as chief executive was within the range of reasonable responses open to FTI after the takeover had been accomplished. Mr Cobley had been lawfully removed from the board and his contract of service had terminated in accordance with an express term agreed by him.

28.

I agree with Mr Jones that the fact that an employee believes, or even knows, that he is to be treated unfairly cannot have the effect of transforming unfair treatment into fair treatment. But that is not the point at issue here. The tribunal treated as relevant to the fairness of Mr Cobley's dismissal the fact that he would have been aware, as an experienced businessman, that he risked being removed from the board, if he lost the takeover battle. He was likely to have to go. They were the commercial realities relevant to his position as chief executive with a seat on the board and they were relevant to the issue of the fairness of the dismissal of someone in his position in those circumstances.

29.

The fact of Mr Cobley's long service as chief executive with an unblemished record was beside the point when he was being dismissed for 'some other substantial reason' found by the tribunal: as explained above, this was not a case of dismissal for a conduct reason. If anything, his long service was likely to operate against him, as a reasonable employer was entitled to take the view that it was not practicable or reasonable in the circumstances to consider alternative employment within the company for a person previously employed as chief executive for almost 20 years."

66. The Employment Appeal Tribunal also dealt with a similar but slightly different set of circumstances in Henderson v Connect (South Tyneside) Limited [2010] IRLR 466. The respondent was a charity providing transport services to community and voluntary groups. The claimant was employed to drive a minibus taking disabled children to school. He had initially been cleared to work with children but subsequently the Council brought to the employer's attention information it had received that the claimant had been involved in the sexual abuse of his two young nieces. When put to the claimant, he denied the allegations stating the matter had been investigated by the police in 2004 who had decided not to prosecute. The Safeguarding Children Board however convened to consider the matter and were not prepared to allow the claimant to resume his driving duties. As there was no alternative work for the claimant, the employer had no choice but to dismiss him. On the facts of this case, the then President of the Employment Appeal Tribunal, Mr Justice Underhill as he then was, stated:

> "15
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> In the present case the appellant clearly suffered a procedural injustice: he had no chance to put his case to the meeting or otherwise to the Safeguarding Children Board. We were not informed about the procedures adopted by the board or the council in cases of this kind, nor (rightly, because the only claim here is against the employer) were we referred to the recent case law about disclosure of allegations of child sex abuse or 'listing': see, eg, R (on the application of X) v Chief Constable of the West Midlands Police [2005] 1 WLR 65 and R (on the application of Wright) v Secretary of State for Health [2009] AC 739. But if it is indeed the case that a man may be judged unfit to work with children, and can lose his job in consequence, because of a conclusion reached on evidence which he does not see, by people whom he does not know and has no chance to address, applying criteria which he has no chance to challenge, and without any effective appeal, that is a deplorable state of affairs. It is of course a separate question whether the decision taken at the meeting and adopted by the council was substantively unjust, ie whether its conclusion that the appellant was unfit to work with children was unreasonable. As to that, the tribunal was not, and nor are we, in a position to make a fair judgment. The respondent, understandably, did not take up the burden of trying to prove that the council's decision was correct or reasonable: it was not its own decision, and it might well not have been in a position to call the supporting evidence even if it had wished to do so. (We note, however, that Ms Elsy wished to continue employing the appellant and was not prepared to let the board's decision go unchallenged.) Accordingly the case proceeded before us on the basis that the appellant had suffered at least a procedural injustice and possibly a substantive injustice as well, for essentially the reasons identified under ground 1.
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> Cases of this kind are not very comfortable for an employment tribunal. Nevertheless, it has long been recognised that the fact that the client who procures, directly or indirectly, the dismissal of an employee may have acted unfairly, and that the employee has thus suffered an injustice, does not mean that the dismissal is unfair within the meaning of the statute. That is because the focus of s.98 of the Employment Rights Act 1996, and its statutory predecessors, is squarely on the question whether it was reasonable for the employer to dismiss. Section 98 is (so far as relevant) in the following terms:

> It must follow from the language of s.98(4) that if the employer has done everything that he reasonably can to avoid or mitigate the injustice brought about by the stance of the client – most obviously by trying to get the client to change his mind and, if that is impossible, by trying to find alternative work for the employee – but has failed, any eventual dismissal will be fair: the outcome may remain unjust, but that is not the result of any unreasonableness on the part of the employer. That may seem a harsh conclusion; but it would of course be equally harsh for the employer to have to bear the consequences of the client's behaviour; and Parliament has not chosen to create any kind of mechanism for imposing vicarious liability or third party responsibility for unfair dismissal.
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> That is, we believe, the correct analysis in principle and well established in the authorities. In the first reported case of this kind, Scott Packing & Warehousing Co Ltd v Paterson [1978] IRLR 166, Lord McDonald in this tribunal pointed out that third party pressure to dismiss could constitute a substantial reason justifying the dismissal of the employee so as to fall within the terms of what is now s.98(1)(b), and he continued (paragraph 6 at p.167):
>
> 'In our view an employer cannot be held to have acted unreasonably if he bows to the demands of his best customer in a situation such as this even if the customer's motive for seeking the removal of the employee was suspect.'
>
> In the later case of Grootcon (UK) Ltd v Keld [1984] IRLR 302 Lord McDonald qualified that observation by pointing out that in such a case the requirements of what is now s.98(4) still need to be satisfied (see paragraph 9 at p.303); but the basic underlying point recognised in Scott Packing remains sound. An illustration of a case where a dismissal was held to be fair notwithstanding that the outcome was, or may have been, unjust to the employee can be found in the decision of this tribunal, chaired by Judge McMullen QC, in Martin v J F X-Press Ltd [2004] All ER (D) 74 (Sep) (and see also Davenport v Taptonholme for Elderly People (EAT/1559/98) 14 January 1999 and Community Living Concepts v Aitken [2002] All ER (D) 177 (May))."

67. Section 86 of the Employment Rights Act 1996 (ERA) lays down the right to minimum periods of notice. Subsection (6) providing:

> 'This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party'.

68. Counsel for the Respondent handed up an extract from Chitty on Contracts 32nd, Chapter 2, Section 3 dealing with 'acceptance'. This acknowledges that there may be acceptance of a contractual term by conduct but that:

> '…Conduct will only amount to acceptance if it is clear that the offeree's alleged act of acceptance was done with the intention (ascertained in accordance with the objective principle) of accepting the offer…there is not acceptance where the offeree's conduct clearly indicates an intention to reject the offer…'

69. Section 1 ERA requires a statement of initial employment particulars to be provided to an employee.

Submissions

For the Claimant

70. Referring to the case of Cobley Counsel submitted that there were some distinguishing features. In that case it is clear that it was the acquisition itself which triggered the board's decision to remove Mr Cobley. It is not however said to be the actual acquisition that led to Mr Holdcroft's removal and indeed they are approximately 9 months apart. The judgment in Cobley makes it clear that his removal followed a 'takeover battle for the company, in which he was on the losing side…'

71. The clause relied upon in Cobley can also be distinguished from the one relied upon here. In Cobley clause 17.1 provided that in the event of the executive ceasing to be a director 'his employment hereunder shall terminate automatically…' That was not the position under clause 19.1 (g) of Mr Holdcroft's contract.

72. There were, it was submitted other significant factual differences. By the time of the decision to remove Mr Cobley from the board a number of new directors had been appointed who controlled the board. The Court of Appeal found no error of law in the decision of the employment tribunal as to the reason for Mr Cobley's dismissal namely some other substantial reason 'where an acquisition follows a hostile or bidding war situation the managing director/chief executive cannot remain in place'. Those are not the circumstances in this case.

73. The Court stressed that it was still necessary to apply the principles of s98(4) with regard to the reasonableness of the dismissal and found that it was within the band of reasonableness open to the employer 'after the takeover had been accomplished'. The tribunal had been entitled to find that Mr Cobley would have been aware 'as an experienced businessman that he risked being removed if he lost the takeover battle…'

74. Counsel accepted that in principle the decision indicates that there may be circumstances in which a CEO might be fairly dismissed for SOSR. Abbernathy ([1974] IRLR 213 CA) said that. It does not take the matter further than that though. The issue of fairness still requires an exploration within the meaning of s98(4) of all of the circumstances of the case.

75. It was Mr Armour who made the decision to dismiss. Without him signing the letter there was no dismissal. He stated in evidence that the reasons stated in the letter at p248 were not the primary reason for the dismissal. Clause 19.1 (g) goes beyond the issue of conduct and is contrary to s86(6) ERA which provides the employer can only dismiss summarily on grounds of conduct. On the face of it this clause is unlawful

76. Counsel queried what the clause actually meant. It states that the company 'may' dismiss. The company is defined as the Respondent. He could not see anywhere any further definition than that. It could not be right that Mr Armour was entitled to unilaterally dismiss the CEO. In Cobley it was a decision of the board.

77. With regard to the procedure adopted Mr Mobbs and Mr Filmer - Wilson stated that the decision was taken in February 2016 that the Claimant would be going. At paragraph 23 of his witness statement Mr Filmer – Wilson stated that once Mr Farrell was secured as a possible replacement the decision to remove the Claimant was made.

78. It is not known when Mr Farrell was formerly appointed and whether this was before or after the Claimant's dismissal. The tribunal can draw an inference that it was beforehand from the lack of disclosure. In any event Mr Farrell was in place within 12 hours of the Claimant leaving.

79. The Claimant clearly didn't know until the days leading up to 31 May until rumours then started that he might be dismissed. Mr Filmer – Wilson didn't want him to know he told the tribunal. The Claimant was therefore invited to a meeting on a false premise.

80. When the Claimant attended the meeting, he was handed a letter but the decision maker, Mr Armour, was not present and he had no opportunity to discuss it with him or raise any issues. Mr Armour did not consult with the board about the dismissal or an alternative role.

81. Mr Filmer – Wilson was asked in cross examination what would have happened if Mr Armour had refused to sign the dismissal letter and said he would have looked at an alternative which might have necessitated altering the board. The Respondent has however not put any evidence before this tribunal as to the articles of association or the time frame that would have taken.

82. With regard to capability the Respondent has been clear in stating to this tribunal that no positive case has been put forward. This is relevant to the issue of Polkey. If there is no positive case, the tribunal might find it surprising how much of the witness statements are devoted to this topic. There can be no criticism of the Claimant's witness statement in not addressing these issues when they were not raised with him. Whatever the Respondent now says a capability argument has been run by it in general terms.

83. Mr Rayner was asked in cross examination about the precise timing of payments to the pension fund and couldn't tell the tribunal. It is therefore difficult for the Claimant to respond or for the tribunal to make any findings on this.

84. There has been no disclosure of a performance procedure so how can the tribunal say the Claimant might have been dismissed under it if it doesn't know the timescale and procedure under it.

85. The Claimant does not accept the majority of the issues the Respondent raises and can provide a context for all of them. Mr Armour stated he didn't think the Claimant was doing a bad job. The Respondent hasn't put before the Claimant enough for him to properly respond to or for the tribunal to conclude that he would have been dismissed on capability grounds.

86. The Respondent has not complied with any part of the ACAS Code.

87. So far as the severance package is concerned the Claimant states he complied with the conditions attached to it. There can be acceptance by conduct or performance. There does not need to be a signed document stating acceptance. The Respondent's witnesses could not point to any breach by the Claimant of his obligations at this point. No request was made by it for a handover.

88. The letter from the claimant's solicitors of the 10 June 2016 was saying there was a repudiatory breach of the contract of employment. That does not mean that the Claimant hasn't complied with a separate and divisible contract that was the severance agreement

89. S86(6) ERA makes it clear that the only exception to minimum notice is dismissal for gross misconduct. Clause 19 is contrary to that and deals with negligence and not gross misconduct. It is not a lawful clause and is not the same as the one in Copley

For the Respondent

90. Counsel had initially handed up a skeleton argument and then spoke to that in closing. He submitted that this was an unusual case for the tribunal in that there is a distinction between the corporate actions that are not reviewable by it and those of the Respondent which are. There has been a failure on the part of the Claimant to recognise the unusual distinctions and a failure to engage with the reality of his position as CEO as both an office holder and as an employee.

91. Copley it was argued is extremely similar notwithstanding the factual differences that the Claimant's counsel has raised. The principles of law from it are equally applicable to this case. There are three key propositions:

    91.1. That the CEO is fundamentally different to other pure employees. When it comes to the CEO's position shareholders, directors and investors are all relevant. S98(1)(b) makes it clear that the consideration is whether the reason was 'some other substantial

reason of a kind such as to justify the dismissal of an employee holding the position which the employee held'

91.2. Henderson makes it clear that the tribunal's focus must be on the actions of the employer. The corporate decisions be ArchiMed that predated the employer's decision are not matters for the tribunal to review. That is clear from paragraph 19 of Copley. That is even more so here where those corporate decisions were not made by the board as in Copley but an entirely separate third party. The Claimant's position is worse than in Copley as it was not the board of the Respondent but ArchiMed's decision. Henderson followed a long line of authorities that the tribunal must only focus on the actions of the employer.

91.3. The focus must be on the set of facts or beliefs that caused the Respondent to act. (Paragraph 21 Copley). That includes a lot of background about what ArchiMed did and decided but the tribunal is not here to make findings about what motivated Mr Filmer – Wilson and those of ArchiMed. It had lost confidence and removed the Claimant from the Board and that is where the tribunal's enquiry begins. The focus must be only on what occurred at the Respondent. It only knew for the first time on the 30 May in the person of Mr Armour and everything it did before that date was uninformed of the decision to be made on the 31 May. That is when the tribunal's jurisdiction is engaged.

92. The Respondent submits that there are three facts which really matter:

92.1. ArchiMed genuinely and properly believed that it could not have confidence in the Claimant going forward and resolved to replace him. It is not necessary to explore whether Mr Filmer - Wilson was right to focus on the accounts and whether his view of corporate governance and the personal loan was the right one. It is unchallengeable that ArchiMed believed that the Claimant was not the person to take the Respondent forward. The only real challenge to that has been the suggestion that there was a conspiracy to bring in management from Nuffield. That suggestion was rejected by Mr Mobbs and the first candidate for the CEO role was not from Nuffield.

92.2. ArchiMed took the requisite steps to remove the C from Kingfisher TopCo and the Respondent and the claimant was no longer a statutory director.

92.3. On the 30/31 May the Respondent had to do something and that is where the tribunal's jurisdiction begins.

93. The tribunal should find that the Respondent has established that some other substantial reason was the reason for the dismissal. The pleaded

case and the unchallenged evidence of Mr Mobbs and Mr Armour was that the Respondent had a reasonable belief that it was impossible for the Claimant to carry out his role without being a statutory director and without the support of ArchiMed. Even the Claimant accepted this as a highly unlikely possibility.

94. Contractually the Respondent relied upon Clause 19.1(g). It was a valid clause contractually. The parties can contract on the terms they see fit. The argument about s86(6) ERA does not invalidate the contract. It provides a right for an employee to bring a claim in the tribunal if the s86 notice is not given. To the extent it did invalidate the contractual clause the Claimant could have been dismissed with pay in lieu of notice which they had a right to do. The argument takes the claimant's case no further.

95. Mr Armour accepted it was a fait accompli. The Respondent has been very frank about that. There is a failure by the claimant to grasp the unusual circumstances here. In circumstances where the CEO is removed it is highly likely that there is no process and that the employer does not have much decision to make once the CEO is removed as a director. It is very similar to the cases involving third party pressure. The employer may look at redeployment but ultimately there is very little decision making for it to do.

96. The Claimant states that Mr Armour's decision is not the same as the ones given in the dismissal letter. They are all though wrapped up in ArchiMed loss of confidence in the Claimant.

97. Mr Armour was a statutory director and the Claimant not at this point. He acted as the organ of the company with actual and ostensible authority to make decisions including as here that following ArchiMed's decisions it was impossible for the Claimant to continue as CEO and so signed off his dismissal.

98. With regard to fairness it is the range of reasonable responses test. What other potential response was there that did not result in the Claimant's dismissal? Mr Kane even accepted it was difficult to see how the CEO could remain without a seat on the board. The Claimant suggested redeployment to a non executive position in finance or other position. That would amount to dismissal and re engagement.

99. Consultation or a board meeting would not have changed the outcome. ArchiMed was determined and had control of the Respondent. There was no room for meaningful consultation and it would have taken matters no further.

100. Dismissal was within the range of reasonable responses. If it were not then there has to be an answer to what was the other potential response that wouldn't have resulted in dismissal and there is not one.

101. Dealing with Polkey and contribution if the tribunal is satisfied that the dismissal was for SOSR but finds there was some procedural irregularity then it made no difference and the Claimant would have gone in a matter of a few hours or days. If not, then it is difficult to see why the Claimant was dismissed. It is not for this tribunal to review the decision of ArchiMed on capability. The Claimant had lost the confidence of three of the most important people in the business. There is no real prospect that he would have continued in employment for even a few months. It is not a question of performance management with a CEO; the employer has to act. That is why the CEO is paid so much more than others.

102. With regard to contribution the Respondent relies upon the loan the Claimant made to the company. It was in breach of contract and the investor agreement to make the loan without telling the board. It was self-evidently improper. The pension contributions had not been made. Whilst this is a complex issue the nub of it was agreed. The Claimant ended up with the contributions in the bank account and then spent them. Regulatory issues aside it was improper. There was a sizeable reduction in EBITDA in the accounts.

103. The contractual claim before this tribunal relates only to the severance pay. Chitty on Contracts is clear at 2 – 029 acknowledges that there can be acceptance by conduct but goes onto state:

> 'But conduct will only amount to acceptance if it is clear that the offeree's alleged act of acceptance was done with the intention (ascertained in accordance with the objective principle) of accepting the offer…
>
> …there is no acceptance where the offeree's conduct clearly indicates an intention to reject the offer…'

104. The Claimant's solicitors letter of the 10 June 2016 clearly stated that the Claimant was under no obligation to provide a handover and that there were no ongoing contractual obligations. If the Claimant was accepting by conduct then he would have had those obligations. This is a belated effort to make a case for the 3 months payment.

CONCLUSIONS

105. The reason for the claimant's dismissal was his removal as a director from the board. That was the set of facts known to Mr Armour, and consequently the respondent, which caused it to dismiss the claimant. It is clear from the authorities that is 'some other substantial reason' falling within section 98(1)(b) ERA.

106. The tribunal is still required to determine whether the employer acted fairly or not within the meaning of section 98(4) ERA and on the facts of this case has concluded it did not. It accepts the submissions made on behalf

of the claimant that the circumstances were very different to those in Copley.

107. The claimant had not been involved in a hostile takeover bid as in Copley. He did not know that it was likely he would have to go as a result of that. On the 17 May Mr Filmer – Wilson asked to meet him on the 31 May 'pre-board' and as late as 27 May 2016 the claimant was producing his Executive Summary for the Board Meeting.

108. The tribunal accepts that it is the actions of the respondent employer that must be focused on and not those of ArchiMed. The employer gave the claimant a letter of dismissal setting out four reasons for the claimant's removal as a director and consequent dismissal. None of these had ever been put to the claimant to enable him to respond to them. The claimant was entitled to consider that the matter of his personal loan to the respondent had been dealt with by way of the verbal warning.

109. It is acknowledged that in Henderson it was said that 'it has long been recognised that the fact that the client who procures, directly or indirectly, the dismissal of an employee may have acted unfairly, and that the employee has thus suffered an injustice, does not mean that the dismissal is unfair with the meaning of the statute'. It was however also stated 'that if the employer has done everything that he reasonably can to avoid or mitigate the injustice brought about by the stance of the client…any eventual dismissal will be fair; the outcome may remain unjust but that is not the result of any unreasonableness on the part of the employer'. In this case the respondent employer had done nothing. Mr Armour merely endorsed the decision taken by the investors. He had not seen the claimant's contract or the clause being relied upon. The alleged grounds in the dismissal letter were not put to the claimant. No consideration was given to discussing these with him or looking at any options short of dismissal. To state that this was fair and 'in accordance with equity and the substantial merits of the case' within the meaning of section 98(4) would have the effect of meaning that any dismissal of a CEO when removed by the Board would be fair without consideration of s98(4). If the legislation was designed to have that effect it would say so. The tribunal has concluded the dismissal was unfair.

110. Counsel for the respondent stated during the hearing that it put no positive case on capability. It still argued that when it came to remedy and the principles set out in Polkey that if the dismissal were found unfair it is the respondent's case that the claimant would have been dismissed for capability.

111. The tribunal accepts that without the confidence of the investors the claimant's employment was not likely to continue for much longer. How much longer the tribunal has not heard enough evidence, as yet, to come to any conclusion on. Although evidence was heard about so called capability matters the tribunal did not hear sufficient detail to be able to conclude that these would have led to a capability procedure and what that

would have entailed. No policy was produced and it is not even known if one existed.

112. The tribunal's position on unfairness is that there was no attempt at all to discuss the position with the claimant and he did not know what was coming. It would not, unfortunately have taken long, for that unfairness to have been addressed but further evidence and/or submissions would need to be heard.

113. The tribunal does not accept the claimant's submission that in some way clause 19(1)(g) was invalid as contrary to section 86(6) of the ERA. It is a contractual provision that the parties had agreed. As stated on behalf of the respondent the right in section 86 is to bring proceedings for the statutory notice the employee he believes he is entitled to if that clause is infringed not to prevent the parties contracting as did.

114. It is not understood how the contract is said to breach s1 of the ERA unless it is the above point.

115. With regard to the claim for the severance package the claimant's solicitors made it clear in their letter of the 10 June 2016 that the respondent had acted in repudiatory breach of contract which the claimant had accepted. He was not obliged to comply with the contract or in particularly provide any handover. Having stated that it cannot be that there was acceptance by conduct or indeed performance of any handover. The claimant did not consider himself bound by the contract. He did not accept the offer of a severance package and that claim is dismissed.

116. The claim which succeeds is that the claimant was unfairly dismissed. It is likely the employment would have soon ended in any event but when will need to be determined at a remedy hearing. The parties should advise the tribunal within 28 days of the date on which they are sent these reasons whether a remedy hearing is required and if so, provide a list of issues for determination and their agreed time estimate for that hearing.

_____
Employment Judge Laidler

Date: 13 / 3 / 2018

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office