EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: S/4108276/2018**

Hearing Held at Dundee on 25 and 26 September 2018

Employment Judge: I McFatridge (sitting alone)

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Mr Niall Bruce	**Claimant** **Represented by:** **Mrs. Bruce** **(Wife)**
Montrose Golf Links Limited	**Respondents** **Represented by:** **Mr. Menon** **Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgement of the Tribunal is that the Claimant was unfairly dismissed by the Respondents. The Respondents shall pay to the Claimant a monetary award of Twenty one Thousand, Seven hundred and Seventy seven pounds and Fifty two pence (£21,777.52).

35 This judgement was issued without reasons on 4 October 2018 and I indicated that written reasons would follow. The reasons are now set out below:

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unfairly dismissed by the respondents. The respondents submitted a response in which they denied the claim. It was their position that the claimant had been dismissed by reason of redundancy or in the alternative that he had been dismissed for some other substantial reason. In either event it was their position that the dismissal was substantively and procedurally fair. The hearing took place over two days. Evidence was led on behalf of the respondents from Mr Jason Boyd the respondents' Operations Manager, Mr Richard Brown a Director of the respondents who had sat on the interview panel and interviewed the claimant for the post of Head Greenkeeper along with Mr Boyd, Mr William McKenzie a Board Member of the respondents (appointed March 2018) who was one of the two Directors who heard the claimant's appeal against dismissal and Claire Penman the respondents' Company Secretary/Deputy Operations Manager. The claimant gave evidence on his own behalf. The claimant and his representative (his wife) prepared a witness statement for the claimant in advance of the hearing. They had understood from the internet that the Scottish Tribunal followed the usual English practice in this respect. All parties agreed that given that this had been done, it would be appropriate for the Claimant to be allowed to use this witness statement as his evidence in chief and this was done. All other witnesses gave their evidence in chief orally in the usual way. Evidence was also led on behalf of the claimant from Les Rae the respondents' Assistant Head Greenkeeper and a former colleague of the claimant, Paul Bruce Teviotdale a Greenkeeper with the respondents and former colleague of the claimant and George Richardson a Labourer with the respondents and former colleague of the claimant. With the agreement of the parties Mr Teviotdale's evidence was interposed between that of Mr McKenzie and Ms Penman on the first day of the hearing since he was not available on the second day when the rest of the evidence for the claimant was heard. Both parties lodged a joint bundle of productions which was added to with consent during the course of the hearing. Documents 287-300 which are excerpts

minutes of various committee meetings were lodged on the second day of the hearing. The existence of these minutes had come out in evidence during the first day of the hearing. On the basis of the evidence and the productions I found the following essential facts relevant to the claim before the Tribunal to be proved or agreed.

Findings in Fact

2. The respondents are a limited company which has responsibility for three local golf clubs Montrose Caledonia, Montrose Mercantile and Royal Montrose. It runs and operates two golf courses and a pitch and putt on Montrose Links. The land is owned by Angus Council and the memo and articles of association of the company state that this role is to operate this facility on behalf of the Council. It is run by a Board which is composed partly of volunteers, partly of representatives of Angus Council and partly by Directors nominated by each of the three clubs. Each of the three clubs nominates three Directors plus an alternate Director. They have a number of Office Bearers and sub-committees. Office Bearers comprise a Chairman, Vice Chairman and Convenors of each committee. One of the committees is a Greens Committee which is run by a Greens Convenor. The directors, apart from the representatives of the Council are part time and unpaid volunteers.

3. The respondents employed a number of staff to carry out administrative tasks and also green staff to look after the golf courses. Up until 2016 they also employed a club professional who was paid an honorarium and himself employed other golf professionals and instructors to work for him.

4. In August 2016 the staff structure of the respondents was as shown on the organogram lodged at page 260. The Company Secretary, Course Manager and Head Golf Professional formed a triumvirate of senior staff who reported to the Board. The Course Manager's contract indicated that in fact he reported to the Greens Convener who thereafter reported to the Board.

5. The claimant commenced employment with the respondents in 2002 as a Greenkeeper. He was then promoted to First Assistant in 2003 and Course Manager in 2008. The claimant's statement of terms and conditions of employment dated with effect from 11 February 2008 was lodged (pages 40-41). In addition a job description which the claimant was given in 2008 was lodged (pages 42-43). A further job description for the role of Course Manager was produced subsequent to this and lodged at pages 44-45.

6. The claimant was paid £622 per week gross (£454 per week net). In addition to this the respondents paid contributions to his pension fund, a defined benefit (final salary) scheme amounting to 17% of his gross pay.

7. As Course Manager the claimant was responsible for day to day management of the greens' staff. He had a First Assistant and Chargehand beneath him as well as greenkeepers and labourers. He was responsible for their management. He did the appraisals of the staff for whom he was responsible although at some stage the First Assistant also became involved in doing appraisals. The claimant had titular responsibility for the condition of the course and was the person whom any complaints or issues regarding the course would be addressed. The Board had a Greens Committee which was convened by the Greens Convenor. The claimant reported to the Greens Convenor and was responsible to him and the committee for the condition of the course. In practical terms what this meant was that the claimant was required to attend the monthly board meeting where he would give a report. He would then leave the board meeting after he had given his report and any discussion arising from his report or any comments or issues regarding the condition of the course had been made. Over the years there had been a number of issues regarding the state of the greens and the state of the course generally which were discussed with the claimant. None of these issues were major.

8. The respondents operate an appraisal system. The claimant was himself subject to annual appraisals which were satisfactory. At no point was the claimant warned about his performance nor were there any disciplinary issues.

5 9. At some point in 2016 discussions began to take place between the Board members regarding a possible restructure of the club. There were at least two drivers for this. The first was that the directors were aware that many clubs in a similar situation to themselves were appointing Operations Managers/Directors of golf in order to have a professional manager in overall
10 charge of the course. There was a feeling that the traditional way of having a volunteer committee with certain volunteer members being assigned executive roles was no longer appropriate. There was a general feeling that the role of the directors should be oversight rather than carrying out specific tasks. In addition there were concerns about the staff wage bill which was felt to be high
15 and in particular staff overtime costs. A minute of a meeting of the club dated 23 July 2016 was lodged (page 287). At the time of this meeting the respondents had an HR Director Mrs Milsom who was one of the volunteer directors on the Board and was responsible for overseeing HR matters. The usual practice of the committee was that HR matters would be held in a
20 confidential session where only the Directors were in attendance. Other members of staff such as the Golf Professional and the Company Secretary who were usually in attendance at the meeting would not be permitted to stay for the discussion on HR matters. The minutes of the discussion of HR matters were taken separately and stored separately in a locked cabinet to which only
25 directors had access. The minute for 23 July reads ….

> "11.2 Staffing – It was agreed that the current staff wage bill, particularly overtime was unsustainable. Mrs Milsom said that the only way to reduce the costs, without expensive compensation payments, would be to
30 restructure the whole business. This would be the ideal time to introduce new contracts, job descriptions shift rotas and Terms and Conditions which would be fit for purpose and remove historical anomalies. It was agreed to hold an extra Board meeting for discussions of this subject, in the Millennium Lounge on Wednesday 14th September at 7.00 pm."

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10. The minutes of this meeting held on 14 September 2016 were lodged (page 288). The section headed "CURRENT STAFF STRUCTURE" Ms Milsom is quoted as having "mentioned a few of the problems with the current situation. Cost, management & efficiency." The next section stated

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> "Mrs Milsom said that she and Mr Duff had approached the problem from two different directions. Mr Duff had concentrated on producing a shift system for a rolling 7 day week which should substantially reduce overtime bills. She had described a new staff structure which would increase efficiency without adding to the overall annual salaries.
> 3. GENERAL DISCUSSION
> All present agreed that a complete overhaul of the business was the only way forward. There followed a long and wide ranging discussion of all aspects of a restructure. The unanimous conclusion was that the preferred new structure would look like:
> Operations Manager – in overall charge of all staff, reporting to the Board (would we then need a Head Golf Professional or would a very good shopkeeper backed by a young assistant pro be enough?)
> 2 Office Admin Assistants
> Head Greenkeeper, Senior Greenkeeper & Mechanic
> 3 Greenkeepers & 2 Greens Labourers"

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The minute goes on to note that Mrs Milsom would produce a new structure costings and a new job descriptions and there would be a further meeting on 10 October to progress this. It was also noted that once the detailed plan was completed it would be presented to Xact who at that time were an external consultancy providing HR advice to the respondents.

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11. The minute of the meeting of 10 October 2016 was lodged (page 289). It was noted that Mrs Milsom had prepared a detailed job description for the position of Operations Manager. It was noted that there was a discussion of this together with minimising overtime by introducing a rolling seven day week. A shift system was handed up. While the minutes states that this was devised by Mr Duff who I believe is a member of the committee the claimant had himself been involved in carrying out the work involved in preparing this rota for green staff. He had done so along with Mr Richardson who at that time was employed by the respondents as a labourer. It was agreed that matters be progressed and that a further meeting be held on 7 November. It was agreed that Kevin Fish of the SGU would be invited to advise on the restructuring. It is noted that

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this meeting was then rescheduled for 8 November however no minute of this meeting was lodged.

12. Whilst all these discussions were going on at Board level no information was provided to the claimant or other members of staff other than that, as noted above, the claimant had been involved in preparation of a seven day rota. There are no minutes of meetings available between October 2016 and January 2017. No direct evidence was led about what happened during this period or the motivations of those involved from any-one involved. Mr Jason Boyd's understanding of the position was that the matter was being driven forward by a sub group on the committee comprising the then Chairman Mr Andrew Boyd (no relation to Jason Boyd), Vice Chairman John Adams (later became Chairman) and Chris Curnin a Board Member. In January 2017 a meeting was called for staff members to attend to be told about the restructuring. Staff members were invited to the meeting by a text message sent to their mobile phones. The claimant was provided with a work mobile phone to assist him in carrying out his duties. The text message to the claimant telling him about this meeting was sent to that mobile phone. As it happens the claimant was on holiday when the message was sent and did not receive notice of the meeting before it took place. He was therefore not at the meeting. There was a fairly short time between the calling of the meeting and the actual meeting.

13. At the meeting the staff who were present were addressed by Andrew Boyd. They were told that there would be an Operations Manager role and were invited to apply. A job description for the post of Operations Manager was produced, this is dated 9 February 2017 and was lodged (page 112). Those wishing to apply were requested to do so in writing to Andrew Boyd by 28 February 2017. It was noted that the Operations Manager would be responsible to the Board of Directors and that all staff members of Montrose Golf Links Limited and the PGA professional would report to the Operations Manager. It was noted that the Operations Manager would be responsible for day to day running of all departments within MGLL working with the Course

Manager, office admin staff and the PGA professional. The Operations Director would be in charge of preparing and achieving annual budgets in conjunction with the Board of Directors. The effect of the appointment would be that the claimant would no longer be reporting direct to the Board via the Greens Convenor but would be reporting to the Operations Manager.

14. There were two internal applicants for the post. One of the internal applicants was Jason Boyd the PGA professional. The other was Claire Penman who was the Company Secretary. An interview took place and Jason Boyd was appointed. He took up his post on or about 1 May 2017.

15. Following this appointment Claire Penman who was the unsuccessful candidate was appointed to the role of Deputy Operations Manager. This was done without any formal procedure. She did not receive a pay rise. Indeed since she also had her terms and conditions changed at around this time to an annualised hours contract which meant she no longer received overtime her pay may have been slightly less. The only addition to her role was that she would be expected to deputise for Mr Jason Boyd when he was on annual leave or otherwise unavailable. The effect of the appointment was that Jason Boyd assumed titular responsibility for the course. Mr Boyd has no training or qualifications in greenkeeping and was not involved in the day to day management of the greenkeeping staff which continued to be carried out by the claimant. The claimant continued to attend Board meetings to give a report on the condition of the green and discuss any issues.

16. Although the staff had been advised of the Operations Manager post at the meeting in January 2017 there was no mention at this stage of the other aspects of the reorganisation and in particular the fact that in September 2016 the respondents had agreed that the way forward did not include a continuing post of Course Manager or First Assistant or Chargehand.

17. The claimant did not apply for the post of Operations Manager. His view was that he did not have the skillset which was required for this post. The claimant

would have been interested in the post of Deputy Operations Manager however he was unable to apply for the post since it was never advertised but simply given to Ms Penman.

5 18. From May 2017 onwards the claimant continued to work as Course Manager. He reported to Mr Jason Boyd instead of to the Greens Convenor. He continued to attend meetings. He continued to carry out staff appraisals. His view was that his job continued much as before with only very minor changes in that he no longer had titular responsibility for the whole course and he reported to Mr Boyd. An organogram was lodged showing the position as at August 2017 (page 261). It shows the position after the appointment of the Operations Manager with the Course Manager and Deputy Operations Manager both reporting to the Operations Manager.

15 19. During 2017 various meetings took place regarding the proposed restructure. Meetings appear to have also taken place of a subgroup which included Claire Penman, Jason Boyd, Andrew Boyd, John Adams and Mr Curnin. In or about October 2017 the respondents put their contract for HR Services out to tender. As noted above they previously had a contract with a company called Xact. Following the tender process they gave a three year contract to a new company called 121 HR. A Consultant from that company Cate Ritchie began to attend meetings of the sub-committee and gave advice on the restructuring process. A minute of a meeting of the Directors held on 12 December 2017 was lodged (page 290). As well as various Directors, Jason Boyd and Claire Penman were present at this meeting. The minute goes on to state:

> "As per the September meeting further discussions have taken place regarding the Business with 121 HR Solutions. The Directors had no objections to consultations taking place with the Greens Staff and the Administration Assistant.
> Cate Ritchie had discussed proposals with the certain members of the Board regarding a potential Greens Staff restructure. The Directors present agreed the organisation was still top heavy and too many chains of command and under the advice of Cate Ritchie and the Vice Chairman and Chairman, a restructure was discussed creating the roles of Head Greenkeeper, Deputy Head Greenkeeper and Greenkeeper. Implications of this are a likely effect upon the roles of Course Manager,

> First Assistant and Chargehand. Further discussions centred around generosity of offers for Terms and Conditions and the ongoing cost burden of these."

5 20. The "certain members of the Board" referred to in this minute were Mr Andrew Boyd, John Adams and C Curnin. During these discussions there had been reference to a draft proposed structure. A copy of this was lodged (page 138). It showed the Operations Manager as being in overall control and below him the Deputy Operations Manager and Head Greenkeeper. Below the Deputy
10 Operations Manager was a part time Marketing and Admin Assistant, a Course Ranger and a part time Administration Assistant. Below the Head Greenkeeper was a Deputy Head Greenkeeper, four Greenkeepers, a Mechanic, a Labourer and a Seasonal Labourer.

15 21. On 9 January 2018 the claimant was asked to gather the Greens staff in the Montrose Golf Links office at 1:30pm. The claimant was not told what was to be announced. Mr Andrew Boyd then addressed the staff who were there. He read out a briefing note which had been prepared for him by Cate Ritchie of 121 HR. The briefing note was lodged (pages 144-145). The briefing note as
20 well as providing the text of what was to be read out provided various standard answers to questions which were anticipated would be asked. Several questions were asked. No note of what actually transpired at this meeting was kept. The gist of the announcement was that there was to be a restructure and that the role of Course Manager, Assistant Manager (or first assistant) and
25 Chargehand represented a top heavy structure and that accordingly some roles may be at risk of redundancy. The staff were told that they would all be invited to individual consultation meetings over the course of the next few days. The claimant's meeting was scheduled for 9:30 am the following day. A letter from the respondents to the claimant was lodged (pages 146-147) dated 9
30 January 2018. It would appear that this was handed to the claimant at some point that day.

22. The claimant, Mr Rae the First Assistant and Mr Teviotdale who was the Chargehand were all extremely concerned that they might lose their jobs. Their

understanding was that going forward the roles of Course Manager, First Assistant and Chargehand would no longer exist but there would be roles as Head Greenkeeper, Assistant Head Greenkeeper plus an additional Greenkeeper role. All three believed that it would have been appropriate to simply slot them into these roles the claimant into the Head Greenkeeper role, Mr Rae into the Assistant Head Greenkeeper role and Mr Teviotdale into the Greenkeeper role. They could not understand why the respondents were going through a redundancy type process.

23. The claimant's first consultation meeting took place on 10 January. The claimant met with Claire Penman and Cate Ritchie. No note of what transpired at this meeting took place. At the end of it the claimant was advised that his role was at risk of redundancy but that he could apply for either the role of Head Greenkeeper, Assistant Head Greenkeeper or both. The claimant raised the issue of why the respondents were proceeding as they appeared to be intending to but did not receive an answer he felt satisfactory. Consultation meetings also took place with all of the other greens staff. Apart from the posts of Chargehand, Course Manager and First Assistant no other posts were identified as being at risk of redundancy however the respondents were going to be changing the terms and conditions. One of these changes involved the seven day rota and annualised hours rather than overtime.

24. No notes were produced in respect of any of these consultation meetings. In advance of the claimant's consultation meeting a briefing note was prepared by Cate Ritchie and this was lodged (page 148-149). It would appear from this that the claimant was given some kind of draft job description for the role of head greenkeeper. Following the meeting the respondents wrote to the claimant on 18 January 2018. A copy of this letter was lodged. The claimant was advised that his role of Course Manager was at risk of redundancy. He was told that before any redundancy was confirmed.

> "We will consult fully with the affected staff and seek to look at alternatives to compulsory redundancy."

25. The claimant was advised of the redundancy payment he would receive if he was dismissed. He was also told that there was an ex gratia addition should he volunteer for redundancy. He was also told:

> "As you will see there is an additional value of £1711 which will be added should you choose to volunteer for redundancy. If you do not wish to volunteer then the statutory amounts will apply. In addition the notice pay may be amended in the event of compulsory redundancy as it may be that the Board require notice to be worked rather than paid in lieu of working. The terms relating to seeking voluntary redundancy are such that the Board reserves the right to refuse an application for voluntary redundancy and any granting of application is entirely at the Board's discretion."

The letter goes on to state

> "Cate is preparing Frequently Asked Questions and will insert any general questions which you ask into this document to ensure that all staff receive consistent, written responses to general questions. Anything you wish to be included into this should be emailed to me or provided to me in writing to allow us to do this."

26. An e-mail was lodged with the Tribunal (but not spoken to by any party) which appears to be from Claire Penman to Cate Ritchie dated 19 January 2018 asking various questions. It has been redacted but the final bullet point states

> "Why is blank position the only job not on the organogram.
> I did highlight the new positions of Head Greenkeeper and Deputy Head Greenkeeper and there was no Course Manager or First Assistant there either but I think the consensus within the Greens Staff is that both of these new job titles are Niall and blank positions from the current job roles."

27. The claimant duly attended the second consultation meeting on 26 January 2018. This was attended by the claimant, Ms Penman and Cate Ritchie. The claimant was not accompanied. Following the first consultation meeting the claimant had telephoned a trade union to enquire whether they would be prepared to provide someone to represent him. He was at that stage not a member of the union. The trade union had declined. The claimant did not feel it was appropriate to bring a work colleague with him. All of his work colleagues

were themselves attending consultation meetings. At the outset of the meeting the claimant was asked if he was happy to proceed unrepresented and he agreed to do so.

5 28. A note of this meeting was produced by Cate Ritchie and lodged (page 166-167). It notes the first question asked by the claimant as being:

> "Why is the organisation treating this exercise as a redundancy situation instead of just changing the terms and conditions? He said that as there
> 10 was no reduction in the number of roles he could not see why it had to be managed in this way."

The minute records Cate Ritchie as responding:

> 15 "Cate agreed to provide a response in writing but explained that essentially, the structure of the organisation is changing and that the jobs that are in place currently are changing such that some of them will no longer be recognisable in their current format. For this reason, the organisation should really treat the process as a potential redundancy
> 20 situation as otherwise, people may feel aggrieved about having their role and responsibilities changed so significantly that the job they did originally would be deemed not to exist any longer."

It should be noted that although it is stated that Cate said she would produce
25 a response in writing no further written response was provided. The only thing eventually provided was the note of the meeting. The claimant is then noted as asking:

> "Why is the Head Greenkeeper role different – what exactly is it about the
> 30 job that has changed?"

The answer is recorded as:

> "Claire responded, stating that there is a change in the way the role
> 35 operates in that the person in this role will report to Jason rather than the Course Manager and that it is Jason who is in charge overall, for the greens. There will be no responsibility for delivering appraisals and no requirement to report to the Board. She explained that it is the responsibility of the Operations manager to be in charge of the whole

operation. She explained that the role of Head Greenkeeper has less managerial responsibility in the role."

29. On 13 February 2018 the respondents wrote to the claimant enclosing notes of the consultation meeting. The letter was lodged (page 168). The letter states:-

"….
You expressed a number of concerns at the meeting, and we pledged to ensure that those concerns were captured fully. I have accompanied this letter with a note of the meeting which I trust captures the concerns you raised in respect of the proposed restructure of the business and proposed changes to terms and conditions.
Given the degree of concern raised during this consultation process I have reverted to the Board and have taken the time, with Cate, to full explain each of the queries and questions raised by you and others.
There will be a Board meeting on the 20th February 2018 and we will be in a position to confirm the outcome of the discussions relating to the terms and conditions changes' proposals, following that meeting.
The closing date for applications for the posts which are being proposed as an alternative to your current role has been postponed until after the Board have deliberated. This is in order for you to fully consider the package and terms and conditions implications of each post, in advance of applying, should you wish to do so."

30. The claimant was then invited to a further consultation meeting which was to be held on 26 February 2018. None of the witnesses gave evidence about the meeting on 26 February but there is a reference to this in a letter sent to the claimant on 6 March 2018 (page 184-185). Although lodged this letter was not referred to in evidence. Most of the letter deals with changes to terms and conditions however the salary for the post of Head Greenkeeper and the amended job description appears to have been handed over at this meeting.

31. Given that there was going to be a delay in the closing date for the new posts Jason Boyd and Claire Penman decided that it would be appropriate to take the opportunity to amend the job description for these posts. A second job description was produced. The original job description is lodged at page 139-141. The amended job description is at page 177-179. Apart from the change in the date by which applications require to be lodged there is no difference between them. Neither job description for the Head Greenkeeper's role

contains any duties or responsibilities which were not already being carried out by the claimant in his role as Course Manager The claimant applied for the job and was granted an interview. Although not asked to do so he sent in a cv. This was lodged (186-187) The claimant's colleagues Mr Rae the Assistant Course Manager and Mr Teviotdale the Chargehand also applied and were also granted interviews.

32. The claimant's interview took place on Friday 16 March. The interview panel comprises Mr Jason Boyd, Richard Brown a Director from Royal Montrose Club and Stewart Melrose a Director from Montrose Merchant's Club. A representative from 121 HR also attended the interview and took notes. In advance of the hearing Cate Ritchie of 121 HR had produced a list of questions which were to be asked of all attendees. The notes of the interview were lodged at pages 196-199 and I accepted these were an accurate albeit not verbatim or complete note of what took place. The interview panel had decided that the decision as to who if anyone to offer the position to would be decided solely on the basis of interview. They would not take into account the past performance of any of the interviewees all of whom had extensive service with the respondents. This militated against the claimant who had been carrying out all the duties of Head Greenkeeper plus the additional duties involved in being Course Manager – attending Board meetings and doing appraisals – for the last 10 years. The claimant was asked about the improvements which he would make to the post. The other interviewees who were asked the same question considered that this first question carried the implication that the greens had not been kept as well as they should have been in the past and that this implied some criticism of the claimant. The claimant was also asked about his vision for where the links would be five years from now. The panel were unimpressed by his answers. The panel were also unimpressed by his answer to questions relating to how he would deal with a member of staff not producing work of an acceptable quality or quantity and when a member of staff was under performing. The claimant's answer to this question involved a reference to him dealing with the issue of staff spending too much time on their mobile phones. All of the greens staff carry mobile phones which are used by

the Head Greenkeeper and assistant to maintain contact with them. There is no tannoy system on the course and given the size it is the only practicable means of keeping contact. Certain Directors including Mr Brown had concerns that in the past the claimant had not done enough to stop staff using their phones too much. The note of the meeting refers to Mr Brown raising the issue that "there is many examples of some staff still using phones to the detriment of their work". It is recorded that the claimant gave no response to this. In general terms the panel were unhappy with the interview answers given by the claimant. The claimant for his part felt surprised by the questions which were being asked. He had not received advance notice of the wide ranging nature of the questions asked. All he had received in advance of the interview was the job description. There was no person specification. He felt that he did not give of his best at the interview. He had not attended an interview for over 10 years and felt that his record as having carried out the job should count for something. He felt that it was clear that unknown to him certain committee members had discussed his performance as a Manager and that they wished to see a new face in the role of Course Manager/Head Greenkeeper. The claimant believes that certain e-mails which he obtained subsequently as a result of a subject access request showed this to be the case.

33. The claimant was not advised of the outcome of the interview on the day. Following the interview he attended the monthly meeting of the Board of Directors as usual and gave his report. The claimant was then called to a meeting the following day and advised by Cate Ritchie that he had been unsuccessful and was being made redundant. The Chairman John Adams and Claire Penman were also at the meeting but did not say anything. The claimant considered that they were embarrassed and shamefaced. The claimant was told on 20 March 2018 that he was unsuccessful. On 28 March the claimant was invited to a meeting on 4 April. Thereafter the claimant attended the meeting on 4 April attended by Cate Ritchie and Jason Boyd at which he was told he was being dismissed by reason of redundancy. He was advised of his right of appeal. On 5 April 2018 the claimant was given formal notice that he was being dismissed and that his last day of work would be 6 April 2018. He

was advised he would receive his normal salary up to the date of termination of his employment together with his statutory redundancy payment of £8636. He would also receive 12 weeks' pay in lieu of notice of £7475.76. He was also told he would be paid a sum in respect of untaken annual leave.

34. On 10 April 2018 the claimant submitted an appeal to the respondents. His appeal letter was lodged (pages 226-227). The grounds of appeal were that the redundancy process had been misapplied and there was no genuine redundancy situation. He said there were no substantive differences between the Course Manager position and the Head Greenkeeper position. He stated that

> "The redundancy process has been incorrectly used as a veiled way of removing me personally as someone who has apparently fallen out of favour with some members of the wider management committee of the Montrose Golf Links Ltd."

35. He disputed that he had performed that badly at interview and questioned the accuracy of some of the interview notes. He made the point that if his performance as a manager was at issue then this ought to have been dealt with during his employment but that it had not been. He considered the redundancy process to be spurious. It was also his position that the redundancy consultation procedure had been poorly carried out and had been done in haste without appropriate union or workplace representative involvement.

36. The respondents appointed two of their Directors William McKenzie and Walter Scott to carry out the appeal. They were not given any briefing as to what was involved in carrying out an appeal. Neither of them saw it as their role to look at the redundancy process as a whole. Mr McKenzie did not know whether he would have the power to reverse the decision to dismiss the claimant or not.

37. In the meantime the respondents took the decision to offer Mr Rae who had been Assistant Course Manager the position of Assistant Greenkeeper. They took the decision to award Mr Teviotdale who had been Chargehand the

position of Greenkeeper. Although the Chargehand post was removed it is clear that this did not cause a result in any immediate cost saving to the respondents because Mr Teviotdale's salary was red lined which meant that he remained at the same salary as Greenkeeper as he had been earning as Chargehand. It is anticipated Mr. Teviotdale will not receive any pay rises until the salary of a Greenkeeper catches up with the salary he is receiving. They decided that, having not appointed the claimant nor any of the others to the post of Head Greenkeeper, they would seek to appoint a Head Greenkeeper externally. This process was commenced and completed before the claimant's appeal was determined.

38. The claimant duly attended the appeal hearing which took place on 4 May 2018. At the appeal hearing the claimant produced a statement which was read out (pages 231-233). A note of the appeal meeting was prepared by Sandie Holmes a note taker from 121 HR Solutions. This was lodged (pages 234-236). I considered it to be an accurate albeit it not verbatim record of what took place at the appeal hearing. Mr McKenzie and Mr Scott had not looked at any documents on the case prior to the hearing. During the hearing there was considerable discussion about the differences if any between the Head Greenkeeper role and the Course Manager role which the claimant had carried out. The claimant confirmed his understanding that the change was to take more management away from the head keeper and not having to attend Board meetings would make it a lesser job which paid slightly less. The claimant made the point that at interview he felt that the panel were trying to trip him up. The claimant made the point that employees were told to apply for the position but that they were not told what was required. They were only given the job description and explained he had also put in a CV and a covering letter. It made the point that he had not had time to arrange trade union representation.

39. Following the meeting the claimant sent a letter clarifying various points which was lodged (page 237). Following the hearing Mr McKenzie and Mr Scott decided that they would speak to Mr Rae and Mr Teviotdale about the interview and their perception of the interview. A note of their meeting with Mr Teviotdale

is found on page 248 and a note of their meeting with Mr Rae is found on page 249. These interviews were carried out on or about 1 June 2018. By this time the claimant was becoming more and more concerned at the delay. He found the delay extremely stressful. On or about 30 May the claimant e-mailed Claire Penman saying that he would appreciate knowing the appeal outcome as soon as possible. On or around that point the claimant discovered that the respondents had appointed a new Head Greenkeeper following their external recruitment process. The claimant e-mailed Claire Penman on 1 June stating

> "Thank you. It is apparent that the outcome of the Appeal Hearing to which I am awaiting has already been predetermined with the announcement of the new Head Greenkeeper."

40. In April 2018, following the claimant's dismissal, Mr Teviotdale had occasion to be in the professional shop at Arbroath Golf Club. He met Andrew Boyd who had been Chairman of the respondents up until March 2018. Mr Andrew Boyd had been Chairman of the club when the decision was made to restructure and to declare the three posts of Head Course Manager, Assistant Course Manager and Chargehand at risk of redundancy. Andrew Boyd was the person who had been in the group pushing forward with the proposals since 2016 and had addressed both the meeting in January 2017 when the role of Operations Director was unveiled and the meeting on 9 January 2018 where the redundancies had been unveiled. Subsequently there had been a falling out between Andrew Boyd and other members of the committee when Andrew Boyd had taken a job with another club. Certain committee members had considered that this involved a conflict of interest although Mr Andrew Boyd disagreed with this. Mr Andrew Boyd had demitted as Chairman albeit he had agreed to stay on until March when another Chairman could be appointed. There was a feeling within the club that he had left on bad terms. When Mr Boyd saw Mr Teviotdale on 22 April he came up and asked him how things were getting on. Mr Teviotdale said that morale was low. Mr Boyd then went on to say that he was surprised that Les Rae never went for the job of Head Greenkeeper. Mr Teviotdale advised that Mr Rae had applied for the job but had not been appointed to it as had Mr Teviotdale. Mr Boyd then said:

> "We were always going to get rid of Niall. As a Greenkeeper – a great guy as a Manager he wasn't up to it."

5 Mr Boyd then went on to say as he was leaving:

> "We tried to give him help but …."

he then left to play golf.

10

41. Mr Teviotdale was extremely concerned about this. After Mr Boyd left he noted that the Arbroath Club Professional had been listening in on the conversation and he said to Mr Teviotdale

15 > "Yes they were always getting rid of him then."

42. Mr Teviotdale mentioned the incident to Claire Penman on or about 30 May when she contacted him to arrange with him to meet with Mr McKenzie and Mr Scott. He did not mention it at the meeting to Mr McKenzie and Mr Scott since
20 he felt that he should only answer the questions he was asked.

43. Ms Penman was sufficiently concerned by what Mr Teviotdale told her to contact Mr Adams and tell him. Ms Penman also telephoned Mr McKenzie and told him what she had been told by Mr Teviotdale. Mr Adams then sent an e-
25 mail to other members of the committee including Mr McKenzie on 31 May 2018. The e-mail stated

> "Dear all, you will be aware (Cate may not) of a conversation Paul Teviotdale had with Claire Wed 30th May re a conversation he had with
30 Andy Boyd, at a recent golf event in Arbroath (22nd April?).
> Paul has stated that Andy said 'the whole exercise of removing the position of Course Manager was to get rid of Niall Bruce' (or words to this effect). Paul also stated there were witnesses to the conversation. Paul also stated Niall was aware of the comments as were the greens staff.
35 Paul did not say he told the greens staff or Niall of the conversation. So the assumption from this is, and now confirmed by Paul, is that the conversation was mentioned to Les Rae, and other members of the

greens staff and one of these relayed the comment to Niall. We do not know which member of staff.
I contacted Andy (last night) and spoke with him today – he is adamant that he has not said the whole exercise was to remove Niall; but wishes he had never spoken with Paul. You can read into this what you want.
I have spoken with Paul, today – he was in the presence of Claire in the office – and he is 110% sure of what Andy said, he does have a witness, but the witness, who was earwigging the conversation/comments, does not, because of his job, want to get involved in any tribunal situation. Paul said that when he saw Andy he chanced his arm and directly asked him about Niall and was it always the MGLL agenda to get rid of him; and was surprised at the response. Paul had, obviously, not mentioned the conversation with Andy, to any other member of MGLL except the greens staff. He would not have mentioned the conversation to Claire, but with the request to meet with Walter and Willy, Paul assumed it related to Andy's comments, i.e., Niall or his rep had been in touch, and not knowing what the meeting tomorrow is to be about, came up with the wrong assumption.
What is interesting are the dates – was Niall and his representative aware of Andy's comments at the time of the Tribunal Meeting (5th May)?
Andy's comments are unfortunate, but do not reflect the position of MGLL. Do we believe Paul – well his comment to me that he would 'swear on his job that he was telling the truth' has a ring of him being genuine. Because if his comments were found to be malicious, I would be asking Cate, on behalf of MGLL, to consider a gross misconduct situation and a P45!
I am not sure what the outcome of the above will have on Niall's case, but at least you are all aware of what has happened".

44. Despite the fact that Mr McKenzie had received this e-mail and also received a telephone call from Claire Penman he did not take any action to investigate the matter before proceeding to draft a letter to the claimant confirming the appeal was not upheld. He appears to have completed the initial draft of this letter at around 5:00 pm on 1 June and forwarded a copy to Mr Scott. He and Mr Scott then produced a review of evidence (pages 252-254). They wrote to the claimant on 5 June 2018 confirming that his appeal had not been upheld. A copy of this letter was lodged (pages 255-257). They indicated in the letter that there were substantive differences between the Course Manager's and Head Greenkeeper's job description. They did this by analysing the two job descriptions. They did not seek to ascertain whether or not the claimant had in fact been carrying out the additional duties referred to in the Head Greenkeeper's job description. Had they done so by contacting Mr Jason Boyd they would have been advised that the claimant had in fact been carrying out

all of these duties. They indicated that they could not find any bias based on past performance and condition of the golf course. They indicated that in their view lack of appraisal feedback was not considered relevant to the current restructure and interview process. It was their position that none of the other candidates said that the questions were biased. They also provided two paragraphs in relation to the criticisms which had been made of the restructuring and redundancy process undertaken. They did so despite Mr McKenzie's clear evidence at the Tribunal Hearing that this was not something which they considered within their remit to investigate. Their final paragraph states:

> "From our investigations it was evident that each of the other candidates considered that the restructuring process had been clear, but questioned the need for this as, from the consultation process, their views were that there would not be a reduction in the number of posts, but changes to the posts. Neither candidate was able to provide any evidence to support these views."

45. A further organogram was lodged showing the structure of the respondents as at August 2018 (page 262). This shows a couple of changes from the original proposed structure at page 138. In particular there is no part time marketing and administration assistant. The person who the respondents had in mind for that post unfortunately died and they have decided not to appoint any replacement. There are now two labourers instead of one. This is in addition to the part time/seasonal labourers. Both the decision to dispense with the post of Marketing Assistant and the decision to add the Labourer post were taken without any formal restructuring process. The respondents have also dispensed with the position of Course Ranger again without any formal process.

46. Following the termination of his employment on 6 April the claimant was able to obtain new employment at Carnoustie Golf Links on 16 April 2018 as a Seasonal Greens Staff Member. This was seasonal work due to end in November 2018 and paid £8.75 per hour compared with the £15.55 per hour he received at the respondents. Whilst employed at Carnoustie the claimant

received £271.20 net per week as opposed to £454 net per week he received whilst employed by the respondents. No evidence was led in respect of the pension contribution which was made by Carnoustie Golf Club and it is assumed that as a seasonal worker who was only there for a short time the claimant did not receive any employer contribution towards his pension during the period he was employed there. Whilst employed with the respondents he had benefited from a pension contribution equal to 17% of his gross pay. The claimant continued to apply for other roles and was successful in obtaining a post as a Greenkeeper at St Andrews which commenced on 3 September 2018. There is a six month probationary period but the role is a permanent one. The claimant's hourly rate is £11.54 per hour.

47. The claimant has suffered increased travel costs as a result of having to travel to work first of all in Carnoustie and then in St Andrews. The distance between Montrose and Carnoustie is 22 miles. The claimant lodged an online calculation which was based on the type of vehicle which he drives. I accepted that the claimant incurred additional costs of £8.24 per day in travelling to Carnoustie which he did not incur whilst working in Montrose. The claimant also has additional costs travelling to St Andrews. The distance from Montrose to St Andrews is 41 miles. This involves crossing the Tay Road Bridge. If the Tay Road Bridge is closed for any reason the alternative route means that it is 84.2 miles between Montrose and St Andrews. When the bridge is open the total round trip is 82 miles and once again I accepted that it would cost the claimant £16.82 additional travel costs each day to do this. No information was provided in respect of any employer pension contribution from the claimant's employment at St Andrews. It is to be assumed that the claimant will be auto-enrolled into a pension scheme and that the employers will pay contributions at the current lowest rate of 2%.

Observations on the Evidence

48. Although there was a considerable difference between the parties as to what I should make of the evidence, this was not a case where there was much

difference in the factual evidence as to the sequence of meetings which had occurred although I was struck by the paucity of direct evidence from the Respondents witnesses about what was supposed to be a consultation process. A substantial number of documents were lodged by both parties which were not referred to in evidence. It appeared to me that although letters were lodged by the respondents, no doubt prepared by their professional HR consultant, setting out a clear process there had been little, if any, buy in to that alleged process by the respondents' witnesses I heard and that they had all been to some extent "going through the motions" of the process they had been told to adopt by their HR consultants. A striking feature of the case was that no member of the Board of Directors who was involved in the earlier planning stages of the restructuring process gave evidence. Minutes of the HR meetings were not lodged until Claire Penman gave evidence relating to their existence on the first day of the hearing. They were then lodged overnight. Since Claire Penman had not been in attendance at any of the Board meetings in 2016 where HR issues were concerned her evidence was little to cast light on the decision making process. Her evidence as to the reason for the restructure, before referring to the documents was essentially that the matter had been driven by the external HR consultants who had been appointed in the autumn of 2017. Both she and Mr Jason Boyd spoke to the feeling that after the appointment of the Operations Director the management structure for the Greenkeeping staff was "top heavy". It was clear from the evidence however that as far back as September 2016 the Board had already postulated a structure where there would be no Course Manager but there would be a Head Greenkeeper. Mr Jason Boyd in his evidence spoke of the reason for the restructure being the need to streamline the management of the course and in particular to remove day to day tasks from the directors. He spoke of the role of Greens Convenor being purely a titular role with no actual function following his appointment as Operations Director. He indicated that the appointment of an Operations Director/Head of Golf was something which was being done in a substantial number of golf courses as part of the professionalisation of the management of courses. Mr Jason Boyd's evidence was:

> "It probably went back to the original reason for restructuring communication flow was lacking we wanted full time employee in that role of communicator."

49. Ms Penman's view on the other hand was that the driver was cost and this would appear to be borne out by what the minutes which were lodged actually say. Although I considered that Mr Boyd and Ms Penman were credible in their evidence I did not feel their evidence was reliable in relation to the underlying reasons for the restructuring. None of them were really able to give any evidence as to why the decisions were made as they were. Both essentially stated that they were guided by the outside HR consultants. I should also say that it is difficult to reconcile Mr Boyd's evidence which was to the effect that he and other members of the sub-committee met during 2017 to decide what changes would be necessary and came up with the idea of a Head Greenkeeper and Assistant Head Greenkeeper post with the clear evidence in the committee minute that this was what the committee had already decided prior to Mr Jason Boyd's appointment and prior to his sub committee ever meeting. The minutes were not lodged until after Jason Boyd had finished giving evidence and it was not possible to hear his explanation of this.

50. Mr Brown gave evidence essentially to the effect that the claimant's performance at interview had been poor. He said:

> "We came away with impression he thought he would be slotted in and didn't have to do anything particular at interview to get the job."

51. He confirmed that the only matter which the respondents had decided to take into account was the performance at interview. He was not able to square this with his own evidence that he had himself become aware of problems with employees using mobile phones on the course. He said that he regularly walked his dog on the course and noticed this. It appeared to me that Mr Brown's position was that the respondents were not prepared to take into account any good service which the claimant had provided over the years but that their own minute of the interview shows that they were prepared to seize

upon any previous incidents which they considered might show him in a poor light.

52. There were also a number of unexplained matters in relation to Mr McKenzie's evidence. He was extremely frank in stating that neither he nor Mr Scott's saw it as any part of their job to enquire into the fairness of the redundancy itself or the process which had been adopted. He did not see it as his role to decide on the fairness or otherwise of that. This does not entirely square with the letter which was written to the claimant rejecting his appeal in which this matter is addressed. It has to be said that the paragraph from this letter which I have quoted above would appear to demonstrate that they were aware that both of the other members of staff involved considered that the process was flawed and there was no need to go down the redundancy route. This is on the basis that there were three jobs both before and after the reconstruction and it appears that all three individuals involved had told Mr McKenzie and Mr Scott that they would have preferred to be slotted in. The suggestion in the letter that the reason for rejecting this is that there is no evidence to support it simply does not make sense.

53. Most worryingly, Mr McKenzie's evidence regarding his knowledge of the conversation between Mr Andrew Boyd and Mr Teviotdale prior to issuing the appeal decision caused concern. During his evidence it was put to him that he is shown as a recipient of the e-mail dated 31 May which was sent by John Adams and which clearly sets out the terms of the conversation. Mr McKenzie's position was that he did not always read his e-mails when he received them and had not been aware of this at the time the appeal panel made their decision a day or so later. Mr McKenzie gave evidence before Ms Penman gave her evidence and Ms Penman's clear evidence was that as well as telling Mr Adams she had telephone Mr McKenzie and advised him of the incident on or about 30 May. She was quite adamant on this point and at the end of the day I preferred her evidence on the point to that of Mr McKenzie who had seemed somewhat disingenuous in saying that he did not always open his e-mails. It therefore appeared clear to me that Mr McKenzie was

aware of the conversation between Mr Boyd and Mr Teviotdale prior to issuing the appeal judgment but that he and Mr Scott decided not to investigate it. Most surprising of all of Mr McKenzie's evidence was that when asked if he and Mr Scott could have reinstated he claimant his evidence was that he would have had to report back to the committee and it would be up to them to decide. He went on to say that he was unsure as to what powers he and Mr Scott had when conducting the appeal. This would appear to fit in with the clear evidence that the respondents had appointed a replacement for Mr Bruce prior to the appeal decision being communicated to him. It would also appear to have been prior to Mr McKenzie and Mr Scott completing what they termed their investigations. I did not consider Mr McKenzie to be a reliable witness at the end of the day.

54. I found the claimant's witnesses to be both credible and reliable. Mr Teviotdale's evidence in particular had the ring of truth about it and in submissions the respondents' solicitor indicated that he accepted that Mr Teviotdale was telling the truth of the matter but of course pointed out that this did not necessarily mean that what Andrew Boyd said was correct or carried any weight. With regard to the claimant himself I had no doubt that he was a truthful witness trying to do his best to assist the Tribunal. It was also clear to me that he was very poor at verbal reasoning and that his desire to be of assistance meant that he was prepared to accept practically any proposition put to him by the respondents' solicitor in cross examination. I should say that there was nothing objectionable whatsoever in the way that the respondents' representative conducted the cross examination however during the course of it he put to the claimant every single aspect of the procedure which had been adopted and with one exception extracted an agreement from the claimant that everything was fair. The one exception was in relation to the issue of whether there should have been a redundancy process at all. The claimant's answers were fairly opaque and it appeared clear to me that he was unwilling to directly negative what the questioner was asking however having reviewed my notes he did not in fact accept that it was fair to go down the redundancy route rather than slot individuals in. I make this point because in his final submissions the

Respondent's representative indicated that his recollection was that the Claimant had accepted this as well. I do not agree with him.

55. At the end of the day I felt that the claimant was one of these witnesses who would agree to practically anything during cross examination and that I should place little weight on his admissions about fairness of the process. His obvious lack of verbal skills was referred to in submissions by his representative and I considered that these were very evident before me. The real issue is whether or not I considered that the process was fair in terms of the law and the admissions made by the Claimant in cross examination in my view were of little weight in deciding this.

Issues

56. The sole issue to be determined by the Tribunal was whether or not the claimant had been unfairly dismissed. In his ET1 the claimant had indicated that if successful he was seeking the remedy of reinstatement/re-engagement. During the course of the hearing he made it clear that he was no longer seeking these remedies but that in the event of success he was seeking compensation only. With regard to remedy it was the respondents' position that certain aspects of the claimant's schedule of loss were exaggerated and/or contained claims which could not be satisfied by the Tribunal. It was also their position that if successful the compensation awarded to the claimant should be reduced on the basis that the claimant had contributed to his dismissal by his performance at interview which he accepted as being poor and that if I were to find the dismissal unfair on procedural grounds then I should make a ***Polkey*** reduction to the compensatory award on the basis that there was a strong possibility that the claimant would have been dismissed in any event had a fair procedure been carried out.

57. The right not to be unfairly dismissed is contained in Section 98 of the Employment Rights Act 1996. This states

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

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

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

….
(c) is that the employee was redundant".

Redundancy is defined in Section 139 of the said Act. It was the respondents' primary position in this claim that the claimant had been dismissed by reason of redundancy. They relied on Section 139(1)(b)(i) of the Act. This states:

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

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

58. The respondents' secondary position was that dismissal was for "some other substantial reason" i.e. by reason of the restructure.

59. It is for the respondents to establish the reason for dismissal. The claimant in this case considered that the dismissal was as a result of a pre-meditated desire to "see a new face in the role of Course Manager/Head Greenkeeper". It was his position that Mr Andrew Boyd had let the cat out of the bag when he told Mr Teviotdale in April 2018 that the removal of him from his job was the purpose of the exercise all along.

60. I was urged by the respondents' representative to ignore what Mr Andrew Boyd said as tittle tattle. I accepted the evidence of the respondents' witnesses that Mr Andrew Boyd had left the club in difficult circumstances having been asked to do so by his fellow Directors. Mr Teviotdale himself said that there had been a degree of bad feeling.

61. It would have been possible for the respondents to call Mr Andrew Boyd to give evidence but they did not do so. They could have applied for a Witness Order if he was not prepared to attend voluntarily but they did not do so. More tellingly they did not actually call any of the other directors who had been involved in the decision making process in 2016 onwards which had led to the adoption of the restructuring plan. It was clear to me from the evidence that Andrew Boyd played an absolutely central role in the events which led up to the claimant's dismissal and here was credible evidence which I accepted that he had told Mr Teviotdale that the purpose of the exercise was to get rid of the claimant. I did not consider that it was in any way appropriate for me to simply dismiss this as tittle tattle. On its own it appeared to be a powerful indicator that there was perhaps something off in the adoption of the process which had led to the claimant's dismissal. It is of course entirely possible that Andrew Boyd simply made this statement to Mr Teviotdale as a way of getting back at the club. There was no real evidence as to why he would want to do this and the issues around his departure seemed to be no more than the usual issues where fellow Board members object to a Chairman's outside appointment. That having been said I considered that I required to look very carefully at the reasons given by the respondents and how they stacked up logically before I could come to a view as to how to treat the evidence of the conversation with Mr Teviotdale.

62. Had this evidence showed a clearly defined and logically set out process of decision making then that would have been a powerful argument to the effect that Mr Boyd's conversation with Mr Teviotdale was a red herring. Unfortunately that is simply not the case. Dealing first with the suggestion that the claimant's role was redundant in terms of Section 39(1)(b) it is not at all clear to me that the requirements of the respondents' business for employees to carry out work of a particular kind had ceased or diminished. There was really no evidence whatsoever to this effect. There was some suggestion in the minutes that the respondents wished to cut costs and in particular that excessive overtime was seen as a problem. This was being addressed by the change in the terms and conditions to annualised hours and a seven day rota.

There was then the suggestion that the management structure of the greenkeepers had become top heavy and that there was a reduction in the Course Manager role following the appointment of the Operations Director. The first point is that I entirely accept that with the appointment of the Operations Director the claimant was no longer had titular responsibility for the course. That having been said he continued to attend Board meetings. The post of Head Greenkeeper would be different in that the Head Greenkeeper would not be required to attend Board meetings. There was also a slight difference in terms of appraisals in that the Course Manager had previously carried out the appraisals whereas it was Mr Boyd's evidence that following this the appraisals would be carried out by the Operations Director with the Head Greenkeeper in attendance. It was clear to me however that the vast majority of the Head Greenkeeper's duties would be exactly the same as the Course Manager's duties. This was demonstrated by the analysis contained in the claimant's witness statement. The claimant had gone through every single alleged difference between the job description of the Course Manager and the job description of the Head Greenkeeper. All of the duties in the Head Greenkeeper job description were duties he was already carrying out as Course manager. There were no additional duities. Mr Boyd specifically accepted this in cross examination when I went through each individual box with him. There were no duties in the Course Manager's job description which were not replicated in the description of the Head Greenkeeper other than the need to attend Board meetings and the overall titular responsibility. With regard to the issue of top heaviness there was a conflict between the evidence of the witnesses who at least gave the impression that the top heaviness was something which had occurred to them during 2017 after the Operations Manager was appointed and the minutes from 2016 which showed that the intention all along had been to get rid of the Course Manager position and replace with the Head Greenkeeper.

63. At the end of the day an employer is entitled to reorganise the way in which they run their business and to restructure when appropriate. If such a restructure results in the need for work of a particular kind to cease or diminish

then there will be a redundancy situation. The fact of the matter here is that I could see no real logical linkage between the restructuring plan which the respondents decided to adopt and the need to get rid of a Course Manager and replace this with the role of Head Greenkeeper which seemed to have identical functions apart from the fact that instead of reporting to the Board and attending Board meetings as previously that person would report to the Operations Director and would not be required to attend Board meetings. My view was backed up by the evidence of all of the claimant's witnesses who said that essentially the jobs were the same. They pointed out that the Operations Director has no experience of or qualifications in greenkeeping and that the new Head Greenkeeper is doing essentially the same job as the claimant but for the fact that he does not require to attend the Board.

64. I did not consider that the Respondents had shown that there was a redundancy situation at all. It is up to them to show the reason for dismissal and they did not convince me at all that the reason for dismissing the Claimant was redundancy. If anything the only role which could potentially be said to be redundant was the role of Chargehand. I did consider whether, on that basis, including the claimant in the pool of those potentially to be made redundant when the Chargehand post was removed would have been fair in any event even if the claimant's role had not itself been redundant. I rejected this on the basis that Mr Teviotdale who held the post of Chargehand gave evidence that he had only applied for the job of Head Greenkeeper because he thought his job was at risk if he didn't and would have been perfectly satisfied to have been slotted in to the role of greenkeeper which is at the end of the day what happened. I also note that his salary was protected and there was no potential saving to the Respondents.

65. With regard to the Respondents' alternative reason for dismissal; that the needs of the restructure provided some other substantial reason for dismissal, I rejected this for much the same reason. The restructure could have been carried out without the claimant being dismissed and without there being any need for he and the others to go through an interview process. It is clear that

all three individuals involved told Mr McKenzie during the course of the appeal that they could not understand why they had not just been slotted in to the new roles. This echoed their evidence to the Tribunal that the Head Greenkeeper and assistant head greenkeeper jobs were essentially the same as course manager and assistant course manager. I also note that the Organogram dated August 2018 (262) which was lodged showed that the Respondents were perfectly happy to change their employee setup (by deleting a marketing assistant post and employing an extra labourer) without any formality when that suited them.

66. At the end of the day we have the claimant's assertion as to the reason for dismissal which not a potentially fair reason which is supported by what Mr Boyd, the architect of the scheme, has said to a third party. As against that we have the evidence of the respondents which in so many areas simply does not stack up. It was therefore my view that given the onus is on the respondents I was not prepared to accept that in this case the respondents had overcome the initial hurdle of establishing a potentially fair reason for dismissal. The dismissal was therefore unfair.

67. In the event that I am wrong in this I should say that I would have found the dismissal to have been unfair in any event given the terms of Section 98(4) of the Act. This states:

> "(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> (b) shall be determined in accordance with equity and the substantial merits of the case."

68. In this case we have a situation where the respondents' reasons for restructuring are confused and where contradictory evidence is given. The reason given for carrying out a redundancy process involving the whole pool is

that it would be fairer to the three employees to do this rather than to simply slot them in. The problem with this is that it is clear from the evidence I heard and also from what Mr McKenzie and Mr Scott were told that the other employees involved would have been perfectly happy to be slotted in. Although I was, unusually, not given any minutes of any of most of the consultation meetings it was clear to me from the evidence they mentioned this throughout the so-called consultation process. In my view a reasonable employer would have taken this into account and even if they had originally thought of going down a redundancy route would have, following the consultation process changed their minds and slotted people in. We then have the decision that although the claimant has been doing the job for 10 years with no issues of competence or disciplinary issues arising and although the claimant has praised on many occasions for his work this is not to be taken into consideration in deciding whether or not to give him the job which is virtually identical to the one which he has been doing save that it has had duties taken off. That having been said it is clear from the interview notes that they appear to take into account alleged deficiencies in the claimant's management in the past without properly putting these to the claimant in any way which allows him to defend himself. I entirely accept that the claimant gave a poor interview. It does appear to me however that he was telling the truth when he said that the questions were not what he expected. He was not given any indication as to what to expect and simply giving him the job description was in my view insufficient if he was going to be asked questions about areas such as his vision for the future. I also failed to see how he could be expected to anticipate this when the whole point of the alleged difference between the job of Course Manager and the job of Head Greenkeeper was that there was now an Operations Director to deal with that type of issue. In my view no reasonable employer would have behaved in this way. It is also my view that a reasonable employer would have given the claimant a proper appeal where the appeal directors would have been clearly told that they had the power to reinstate the claimant and uphold his appeal. They would also have been advised that their terms of reference included looking at the structure and process which led to his dismissal. A reasonable employer would not have appointed a replacement

before the appeal process was complete. A reasonable employer who had Mr Andrew Boyd's comments brought to their attention prior to the appeal process concluding would have investigated these comments at the appeal stage. In my view even if the respondents had succeeded in establishing a potentially fair reason for dismissal then the dismissal would still be unfair when considering matters in terms of Section 98(4).

Remedy

69. The claimant sought compensation. The claimant had provided a Schedule of Loss which included a number of heads of loss which cannot be awarded by the Tribunal. So far as those which can are concerned I accepted that the claimant had taken appropriate steps to mitigate his losses. He had found a seasonal job with Carnoustie Club almost immediately. He earned £454 per week net whilst with the respondents and £271.20 per week whilst with Montrose. He was with Montrose until 3 September however he was in receipt of notice pay up until 2 July and I agreed with him that it is appropriate to calculate his wage loss only from that date. He is therefore entitled to eight weeks' wage loss at the difference of £182.80 per week which amounts to £1462.40. As at the date of the hearing he had been working with the St Andrews Club for three weeks. His weekly wage loss whilst employed with that club is £75 (£454 minus £379). His wage loss at St Andrews is therefore £225. His past wage loss is therefore £1687.40.

70. I accepted his evidence regarding the additional cost he incurs in travelling first of all to Carnoustie and then to St Andrews. I accept his figure that the daily cost travelling to Carnoustie is £8.24 and travelling to St Andrews is £16.82. I do not think it is appropriate to award travel costs during the notice period but for the 40 working days since then the claimant is entitled to £329.60 (40 x £8.24). For the 15 working days at St Andrews he is entitled to £252.30 (£16.82 x 15). His total mileage costs to date are therefore £581.90 and adding this to the wage loss figure gives a total of £2119.30.

71. The claimant was entitled to a final salary pension whilst employed with the respondents. I accepted his evidence that he was very unlikely to be able to replace this. I did accept that in terms of the new pension arrangements his employers will be required to pay 2% of his gross salary in pension contributions. The claimant sought to use the contribution method to value his claim. Given the sums involved I think this is appropriate. The respondents' contributions would have amounted to £105.74 per week (622 x 17%). I accept the claimant would not have received any employer's pension contributions whilst at Carnoustie but that at some point St Andrews will require to pay 2%. I do not have detailed information regarding his gross pay but based on his hourly rate of £11.55 and a 40 hour week I assume this to be £462. This gives an employer's contribution of 9.24. I consider it appropriate to deduct this sum when calculating the loss of pension contribution for the period whilst the claimant is working at St Andrews. The claimant's pension loss whilst at Carnoustie amounts to £845.92 (£105.74 x 8). Pension loss for the three weeks at St Andrews up to the date of the hearing amounts to £289.50 (3 x £96.50). This gives a total of £1135.42. Adding these figures together gives total past loss of £3404.72 (£1687.40 + £581.90 + £1135.42.

72. With regard to future loss I considered it reasonable to award the claimant one year's wage loss from the date of Tribunal. The claimant works in a specialist role and I accepted his evidence that there were limited alternative employers in the areas. Hopefully his pay and conditions will improve at some stage in the future but I cannot say with certainty that this will occur within one or five years or indeed at all. On the other hand the claimant's previous employment was subject to the normal vicissitudes of life and although it is his position that he intended to stay in that post until retirement I do not consider that it would be appropriate to award him the full period he sought. At the end of the day I consider the claimant is entitled to one year's future wage loss. His actual lost wages will amount to £3900 (52 x £75). With regard to future travel costs I note that the claimant will be attending work around 48 weeks per year and on that basis his additional travel costs amount to £4036.80. Whilst I accepted on days that the Tay Bridge is closed the claimant will have additional costs I did

not consider it appropriate or proportionate to include this in my calculations. It is impossible to say how often the bridge will be closed. It is also likely that any additional costs the claimant incurs as a result of this will be balanced out by days where he is not attending work for reasons other than holiday. The total figure for additional travel costs is therefore £4036.80.

73. With regard to pension loss I do consider that it is unlikely that the claimant will be able to replicate his final salary pension scheme in the medium term. The claimant sought five years' future loss of pension contributions. I considered that to be high. Once again I consider that I have to take into account the fact that the claimant's employment was subject to the usual vicissitudes of life and would not necessarily have continued indefinitely. There is also the possibility that the claimant may obtain work in the future from another club which still operates a final salary scheme or makes pension contributions on the same scale as the respondents. I do consider it appropriate to award the claimant two years' future loss of pension contributions. This amounts to £10,036 (104 x £96.50). The claimant's total future loss is therefore £17,972.80, adding the past loss of £3404.72 gives a figure of £21,377.52. The claimant sought £1000 in respect of compensation for loss of statutory rights. I consider the figure of £400 more appropriate and this brings the total to £21,777.52.

74. The claimant sought a sum in respect of adoption leave £908. I heard no evidence regarding this and in any event I considered it not being included as being too remote. The claimant sought compensation for a reduced work life balance and injury to feelings. Neither of these are awards which are in my power to make.

75. The claimant also sought an uplift in the compensatory award to take account of the failure to follow the ACAS code. I considered carefully whether or not such an award should be made. It is clear from the paperwork lodged albeit perhaps not from the evidence of the respondents' witnesses that the respondents had in mind to follow a proper process. They had engaged a specialist HR firm and the documentation produced shows that they went

through a process of consultation meetings. It did appear to me that much of this documentation had been produced in order that it might be produced at a Tribunal at a later date in order to hopefully document a fair process. As noted above it has failed in its purpose since I was not at all convinced that the respondents' reason for dismissal was either of the two reasons put forward by them. I was also less than impressed with the appeal which had been afforded Mr Bruce. For an Appeal Manager not to know whether or not he has the ability to reinstate the dismissed employee would tend to suggest that the appeal process is not being carried out in the spirit of the ACAS code. All of the above having been said the fact of the matter is that a process was followed albeit a flawed one and one where the respondents were paying lip service to the concept of consultation rather than actually doing it. Having considered matters in the round my view is that such procedural infelicities as have occurred would not make it proportionate or appropriate to find that a breach of the ACAS code had occurred or that there should be an uplift as a result thereof. I therefore declined to make such an uplift. The claimant has already received the redundancy payment and notice pay to which he was entitled which means he is not entitled to a basic award.

76. The Respondents sought to reduce the compensatory award on the basis of contribution. This was based on the Claimant's poor performance at interview. I did not consider it in any way appropriate to accede to this request. I agreed with the Claimant that the interview process was at its basis completely unfair. I have accepted that the Claimant's assertion that he was being deliberately targeted was more likely than either of the reasons being put forward by the Respondents. It would be completely inappropriate to award a reduction on the basis of his performance at interview. Similarly the Respondents sought a Polkey reduction. Once again I consider it would be quite inappropriate to award this. I do not believe there was any realistic possibility of the Claimant being dismissed had the Respondents dealt with matters in a fair way.

77. The total award is therefore £21,777.52. It would appear that the claimant was not in receipt of any recoupable benefits and there is therefore no prescribed element.

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25 **Employment Judge:** **Ian McFatridge**
Date of Judgment: **04 October 2018**
Entered in the Register: **04 October 2018**
And Copied to Parties