EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr James Bice	**v**	BGL Group Limited
Heard at: Cambridge		**On**: 17 October 2018
Before: Employment Judge Foxwell		

Appearances
For the Claimant: Mr M Anastasiades, Solicitor
For the Respondent: Ms C Merrington, Senior Legal Counsel

JUDGMENT

The Claimant's claims of unfair and wrongful dismissal are not well-founded and are dismissed.

REASONS

1. The claimant, Mr James Bice was employed by the respondent BGL Group Ltd., between 1 September 2006 and 13 June 2017, when he was dismissed with pay in lieu of notice.

2. Having gone through early conciliation between 9 September 2017 and 9 October 2017, he presented complaints of unfair dismissal and breach of contract to the tribunal and those are the matters that have come before me for hearing.

3. At the date of his dismissal the claimant was employed as an Associate Director for Trading and Performance in the respondent's Insurance Distribution and Outsourcing division, (or IDO division), more specifically he worked in a business known as Front Line, which was part of IDO. In his capacity as an Associate Director, he reported to the Managing Director of Front Line, Mark Townsend, who in turn reported to Peter Thompson who was the Managing Director of the IDO division. The

respondent is a large organisation, with some 2569 employees, but, as I have just described is broken up into smaller divisions.

4. In deciding the claimant's claims, I heard evidence from four witnesses on behalf of the respondents. Firstly, from Mrs Kate Mark, who is an Employee Relations Manager and who has had many years' experience in HR; from Mr Mark Guttridge who was employed as a Finance Director within the respondent between 2009 and April 2018, and was Finance Director for the last two years of that period, he has now moved on from the respondent; Ursula Gibbs who works at Associate Director level within the respondent, that is the same level as the claimant enjoyed; and Sean Melia who was a Director of Business Services, a different division within the respondent and he dealt with a disciplinary appeal.

5. The claimant gave evidence in support of his claim and called no other witnesses. That is quite normal in the employment tribunal and I certainly do not draw any inference from the number of witnesses a party calls.

6. In addition to the evidence of those witnesses, I consider the documents to which I was taken in an agreed bundle, and references to page numbers in these reasons relate to that bundle.

7. Finally, I heard closing submissions from the parties' representatives. I had set a timetable at the start of the hearing to ensure that we were able, at the very least, to get to this stage within the ambit of the one day listing and I am grateful to both representatives for sticking to that timetable so that objective could be met.

8. I deal briefly with the legal principles that I must apply.

9. In a claim of unfair dismissal, where the dismissal is admitted, as it is in this case, it is for an employer to establish the reason for dismissal and that it is one of the potentially fair reasons set out in s.98 of the Employment Rights Act 1996. If the employer does that, then it is for the tribunal to decide whether it was in fact fair to dismiss for that reason by applying the test of fairness contained in s.98(4) of the Act. The test of fairness does not permit the tribunal to substitute its own view for that of the employer, rather, the tribunal is required to assess the reasonableness of the employer's decision and decision making process when judged against the band of reasonable responses of an employer and having regard to the size and administrative resources available to the respondent. The tribunal is assessing the reasonableness of the decision, not the truth of the underlying allegations.

10. Turning to the claim of breach of contract, this is not a case of summary dismissal. The respondent is not asserting that the claimant's acts were in repudiatory breach of contract, on the contrary, he was dismissed with notice. The issue in this case is whether his contract provided for three months' notice as was paid to him, or six months' notice. As far as this issue is concerned, I am required to assess it objectively on the evidence presented as the claimant brings the claim he bears the burden of proof.

11. With that brief explanation of the legal principles I turn to my findings of fact which I make on the balance of probabilities.

Findings of Fact

12. As I already noted the claimant's employment began on 1 September 2006, on 1 July 2011, he was promoted to a Senior Manager. The contract issued to him at that time is at page 48, and it provided amongst other things, for three months' notice.

13. On 1 January 2015, he was promoted again, this time to an Associate Director. Neither party has been able to locate a copy of the contract issued at the time. The claimant's recollection is that the front page of the contract referred to a six month notice period. He also maintains that his recollection would be corroborated by his former PA Ginnette Goodhew. There is some documentary evidence surrounding the promotion, first of all there is an offer letter dated 12 December 2014 at page 54. As one might expect this sets out a number of terms relating to the promotion, including most importantly no doubt at the time, a significant pay rise. The letter is silent on the issue of notice.

14. At page 53 is an internal document entitled, 'Employee Change Form'. This is dated 1 December 2014 and is signed by two senior directors and counter signed by one of the Human Resources people. This is not likely to be a document that the claimant saw at the time, but it is a record of the changes which were proposed as part of the promotion. Against the heading, 'Notice Period', the word 'NO' has been inserted, which is consistent with there being no change to the notice period. I will return to this evidence whence I come to my conclusions.

15. Moving on in the chronology, having been promoted to Associate Director, on 8 December 2015, the claimant was given a first written warning in respect of an incident in which he was alleged to have struck a colleague in the face. The warning was said to remain on his record for a period of a year. I note that in considering the penalty, there was reference to mitigating circumstances and the colleague whom was struck had indicated that no violence was intended, albeit that the conduct was unwanted.

16. On 21 November 2016 during the currency of that written warning, the claimant was given a further warning, this time described as a 'final written warning'. This arose from an incident in which it was alleged that the claimant had drunk too much at a client event and had taken himself off from the event. There was then an issue in respect of a hotel bill and certain extra charges connected with the hotel bill. The conclusion, at first instance, in this disciplinary process was that the claimant's conduct amounted to gross misconduct. But mitigating circumstances were taken into account, including it is said, the claimant's length of service, the admissions he had made and the remorse he had shown, and that had

resulted in the final written warning which was to remain on his file for two years. The claimant appealed against that decision and the appeal was resolved in January 2017. The appeal officer was Mr Duggan, whose name will come up in a different context a little later in the chronology. Mr Duggan allowed the appeal in part, reducing the period of the final written warning to 18 months.

17. That leads me to the incident which is at the heart of this case. This incident took place on 10 May 2017 which was the first day of a two day conference for insurance industry people being held in Manchester. Put at its simplest, the claimant and his colleague and subordinate, Gary Hutt, did not attend a dinner to which they had been invited by Ageas Insurance, one of the top three underwriters with which the respondent does business, on the eventing of 10 May 2017. The question which lies at the heart of this case is whether the failure to attend and the circumstances in which that arose, amounted to misconduct.

18. Many of the facts surrounding events that evening are agreed. Firstly, it is common ground that the event involved a drinks reception starting at about 7 pm, followed by a dinner, starting at 7:45 pm. All taking place in Manchester Town Hall. It is common ground that the claimant and Mr Hutt did not attend. It is also agreed that the claimant sent apologies on his and Mr Hutt's behalf by text to Darren Whittaker, his contact at Ageas Insurance in respect of this event. That text is shown as being sent at 8:05 pm, twenty minutes after the dinner was due to begin. It is also not in dispute that the claimant had been at a business meeting elsewhere in the City that evening. His evidence which was unchallenged throughout the disciplinary process and in this hearing, was that this alternative meeting related to important work for the respondent. He told me that it concerned a regulatory issue which had the potential to expose the respondent to a substantial fine. He said that it was urgent because this matter had to be resolved by the end of that month.

19. The respondent's case is that the dinner which the claimant failed to attend, was a prestigious event and that he would, or should, have known that. His non-attendance caused other BGL employees present serious embarrassment, they maintain it caused the organiser some embarrassment and frustration. The respondent's case is that this had the potential to harm the relationship between it and Ageas, although it is clear from their evidence that no lasting damage was done. Once again, the claimant agrees and accepts that his failure to attend this meeting would have caused some annoyance, but he characterises that as likely to have been short term and he disputes that any real damage was done. Furthermore, and in any event, he maintains that the context of all of this was his work on that urgent regulatory issue and it was for that reason that he was meeting with a potential alternative supplier which I shall refer to simply as BB.

20. Having reached the view on the evening of 10 May 2017, that it was too late to make an appearance at the Ageas dinner, the claimant and Mr Hutt

went off for dinner and drinks with the people he had been meeting with from BB. It is clear from the documents that I have seen, that his decision in respect of that dinner caused an almost instant reaction amongst the senior management at the respondent's.

21. On 11 May 2017, the next day, Mark Townsend, his line manager, emailed Della Garmery of HR saying as follows, page 99:

"Della, it has come to my attention that James and Gary Hutt failed to appear at a dinner organised by Ageas yesterday evening. It was a formal dinner; the invitations had been accepted and it appears as if no apologies were issued in advance. I imagine that James will say that he was conducting urgent business elsewhere, at BIBA, but given his record, the importance of the host and lack of basic manners I will be meeting him in the morning. Unless his excuse is absolutely stellar, I would intend to adjourn for thirty minutes, see him with you all soon and potentially suspend pending a disciplinary, or summarily dismiss."

22. Mr Townsend plainly did not follow through on the possibility of summary dismissal there and then, but it is an indication of what the claimant's manager thought of the turn of events the night before. Mr Townsend also discussed this matter with his own boss, Mr Thompson, as one can see at page 98. This email, dated 12 May 2017, followed an initial discussion that Mr Townsend had with the claimant and he records there some of the explanation that the claimant gave for his decision on 10 May 2017. The claimant said, amongst other things that in his meeting with BB he lost track of time and had been intending to attend the Ageas event. The email suggests that the claimant had said that he was prompted by Darren Whittaker of Ageas who had asked him whether he was intending to come, that is a matter which is disputed on the facts.

23. I pause to note at this stage, however, that the explanation recorded by Mr Townsend at that stage is the one that the claimant has given throughout in this case and it is only right to record that he has been consistent in what he says about what he did and why he did it on the night of 10 May 2017, subject perhaps to some differences in detail as time progressed. In any event, Mr Thompson considered this and suggested asking HR how to deal with it under a formal process and that is what indeed happened. I note also, that Mr Townsend suggested that Mr Gary Hutt also be dealt with by way of disciplinary investigation. I have had no specific evidence about how Mr Hutt was in fact dealt with, subsequently.

24. Following that discussion between senior managers, an investigation was begun and this was conducted by Penny Taylor of HR. She held an investigatory meeting with the claimant on 26 May 2017 and the notes and minutes of that meeting are at pages 101 – 103, and in broad terms the claimant gave the same explanation as he had before. He emphasised the importance of his meeting with BB, that it had been difficult to arrange, the fact that he had lost track of time and had attempted to apologise on

the evening and tried to do so face to face the next day but without success. It is perhaps fair to say that he did not quite appreciate the embarrassment that his colleagues may have felt on the evening of 10 May 2017, judging by the answers he gave. He described his non-attendance as causing some frustration at the time and that might indicate some lack of insight into the position his colleagues were left in.

25. Miss Taylor carried on with her investigation, speaking to Gary Hutt on 31 May 2017. It is fair to say that in her opening remarks, she stated that Mr Hutt was not under investigation, that is perhaps the best evidence I have of how he was dealt with. Mr Hutt confirmed that the claimant had sent a text message with apologies explaining that the two of them had overrun. When he was asked why he thought Ageas had reacted in the way that they had, and I'll come on to that, Mr Hutt said as follows:

"Did not turn up with any real notice, had invited a long way in advance and gone to a lot of trouble organising it. When we realised the time, it was an 'oh dear' moment. Personally, I am quite disappointed with how it panned out and understand the poor image it gives."

So that shows some insight into why Ageas might have been more than frustrated by the non-attendance of the claimant and Mr Hutt.

26. Following the investigation, Miss Taylor prepared an investigation report, which appears at page 120. This sets out the facts in a number of bullet points, certainly as she understood them to be, and once again the context of the non-attendance was the earlier meeting with BB which overran. Miss Taylor noted that the claimant and Mr Hutt went for dinner with BB instead of going to the Ageas event, albeit late.

27. Following on from that, Mr Guttridge who had been asked to conduct the disciplinary process and wrote to the claimant on 7 June 2017 inviting him to a disciplinary hearing. That letter is at pages 118 – 119 of the bundle. This set out two charges. The first was bringing the company name into disrepute and behaviour that has a detrimental impact on BGL Group in that he had accepted an invitation from Ageas to attend a formal dinner with them at Manchester Town Hall on 10 May 2017, however, he failed to attend the dinner or make apologies for non-attendance which resulted in a member of Ageas contacting himself to ascertain his whereabouts. The second charge was that Ageas had made a formal complaint about his non-attendance to the respondent. The letter enclosed a copy of Miss Taylor's investigation report, a copy of the text that the claimant had sent to Darren Whittaker, on 10 May 2017 explaining his non-attendance, minutes of the investigatory meetings and some emails between Miss Taylor and Gary Hutt. The claimant was told that he was entitled to be accompanied at the disciplinary hearing which was scheduled for 9 June 2017.

28. The disciplinary meeting took place on 9 June 2017 and minutes of it start at page 121. This was chaired by Mr Guttridge. The claimant had decided

not to be accompanied at the meeting. Once again he gave a consistent account in broad terms and questioned whether there had been a formal complaint from Ageas Insurance concerning his and Mr Hutt's non-attendance. That was an entirely reasonable question given the terms of the charges he faced. Mr Guttridge agreed to look into this and proposed a further meeting on 12 June 2017, but the claimant preferred to deal with further matters by correspondence he told me in evidence, as he was about to go on holiday. Mr Guttridge did investigate further and obtained three statements as appear at pages 129 – 131. These were statements from Mr Duggan and Miss Gibbs, both of whom were at the dinner and from Mr Thompson, his boss' boss. Mr Duggan was of course the gentleman who dealt with the disciplinary appeal earlier in the year. None of these documents could be described as a formal written complaint from Ageas. Nevertheless, they document the embarrassment that was felt by the respondent's employees and the embarrassment and annoyance that was caused to their business partner Ageas. For example, Mr Duggan stated that he had been approached by Chris Dobson on the day after the dinner and that Mr Dobson had told him how embarrassing it had been for him to explain to his boss, Andy Watson, head of Ageas, why two of the respondent's guests had not turned up. Miss Gibbs describes Darren Whittaker expressing his frustration about the non-attendance, given the cost of the event and how she felt embarrassed when they did not attend. Mr Thompson regarded matters as sufficiently serious, that he felt the need to contact Mr Dobson to understand the position and he spoke to Mr Dobson about the evening in question. He described Mr Dobson's tone as frustrated with the claimant's behaviour, but that Mr Dobson was happy to leave it at that following Mr Thompson's apology.

29. That evidence was sent by email to the claimant on the evening of 12 June 2017. The claimant acknowledged it within a few hours, and said that he would forward it to his solicitor, as he was by that stage taking legal advice, and would respond with any further comments or questions in due course.

30. On 13 June 2017 however, the next day, Mr Guttridge sent his decision in writing to the claimant. This is at pages 132 – 133. He summarised the claimant's responses in a number of bullet points on the first page of his letter, having set out first of all the disciplinary charges. In doing so, he noted that the claimant had sent apologies by text on the evening of the event. He concluded however, that the claimant's conduct fell below that expected of an Associate Director and this was in two key respects.

31. Firstly, he concluded that it was wrong for the claimant and Mr Hutt to have failed to attend at all, even if it were late. Secondly, he considered it inappropriate that they decided to accept an alternative dinner invitation from BB in the circumstances. Mr Guttridge also concluded that the claimant had apologised by text only after he had been prompted by a call from Mr Whittaker.

32. Mr Guttridge referred to the earlier warnings given in 2015 and 2016 and it was in that context he concluded that there was an act of misconduct that triggered the final written warning and resulted in a decision to dismiss with notice. He referred to the claimant's right of appeal and as I have noted the claimant was paid three months' pay in lieu of notice.

33. The claimant exercised his right to appeal, which he submitted following an agreed extension of time, on 30 June 2017. The letter was in fact written on the headed note paper of his solicitors at the time and it appears at pages 139 – 142. There were six grounds of appeal. The first was that the evidential documents had not been shared with him prior to the hearing. This was a reference to the statements of Mr Duggan, Miss Gibbs and Mr Thompson. It is right factually that they were not sent to the claimant before the meeting on 9 June 2017, they were quite plainly obtained as a result of the meeting on 9 June 2017. They were sent before the dismissal decision was sent, but at a time when the claimant had really no opportunity to comment on them. His second ground of complaint was that he had been misled about whom would be contacted as part of the company enquiry. This related to the discussion with Mr Dobson, that is not a matter that is being pursued before the tribunal. The third was that the dismissal letter did not conclude that the allegations of misconduct had been upheld and this appears to relate to the fact that the findings did not correspond, or correspond exactly, with the original disciplinary charges. The fourth ground was an allegation that the allegations could not have reasonably been believed to be true. Fifthly, he asserted that there was a plan to remove him from the business as part of some office politics. He described this as being via excessive fault finding. His sixth ground was that there had been a failure to consider mitigating factors such that the dismissal was wrongful and unfair.

34. The appeal was acknowledged and Victoria Templeton, an HR consultant was engaged to deal with the process. She sent further copies of relevant documents to the claimant on 11 July 2017, see page 144. The appeal hearing itself took place on 8 August 2017, following a postponement for some reason that was not explained to me, the claimant told me that it was a long meeting that took more than two hours, and Mr Melia, who chaired the appeal process, went through each of his grounds of appeal. It was put to him that he had the opportunity to explain his grounds fully.

35. Two matters were picked up in evidence before me, arising from the appeal minutes, which are at pages 146 – 160. The first related to the claimant's former PA, Ginnette Goodhew. The claimant contended that she should have been spoken to as a person who would have a recollection of the terms of his notice period in his contract. He also questioned whether his contact at BB, a Mr Brierley, should be spoken to. Mr Melia confirmed in evidence that he did not speak to Mr Brierley, nor did he speak to Miss Goodhew. He said that he felt he had sufficient evidence in the matters that had already been investigated and that the facts were not really in dispute. However, the claimant did obtain a statement from Mr Brierley by email on 10 August 2017, as appears at

pages 166 – 167. This account broadly corroborates what he had said, namely that he had been in the meeting which had overrun. The claimant's evidence is that he forwarded this to Miss Templeton the same day and I have no reason to doubt that, although I have not seen the underlying documentary evidence. But there is no evidence that Miss Templeton passed that on to Mr Melia and he did not see it before completing his appeal decision which was set out in writing on 18 August 2017, page 162 – 165. This was a detailed letter which dealt with each of the claimant's points in turn.

36. The appeal was dismissed and with that the internal process was at an end.

37. I turn then to the parties' submissions.

Submissions

38. The essence of the claimant's case is that the event underlying his eventual dismissal was so trivial as not to amount to, or be capable of amounting to, misconduct. At the most, it is said, all this could have done is caused some annoyance at the time and indeed the evidence shows, according to the claimant that this annoyance was soon forgiven. He refers in this context to Mr Dobson saying to Mr Thompson, that they would leave it there once Mr Thompson apologised. The claimant also referred me to an email or text he had from Mr Whittaker at page 95, which is incomplete, but which he says shows that there were no hard feelings a day or two later.

39. Additionally, the claimant's case is that there is no evidence of any concrete financial or business loss, so there really is nothing, he would say, to show that the respondents' interests had truly been affected. Furthermore, he contends that his actions had been in a good cause because he was seeking to prevent serious harm to the respondent because of the regulatory issue.

40. For all of these reasons his submission is that this is a matter that has been blown out of all proportion and a finding of misconduct should not have been made. Therefore, there is no trigger for dismissal because of the earlier final written warning.

41. Additionally, and indeed separately, he argues that the decision to dismiss was procedurally flawed because the respondent persisted in finding that there was no apology in the face of evidence to the contrary, because Mr Guttridge had failed to make clear findings, that evidence had been submitted late and at a time when he could really not make any submission, or any submissions that were likely to be meaningful about them, and because of the failure to interview either Mr Brierley or Miss Goodhew.

42. I put to Mr Anastasiades that I needed to look at procedural matters in the round and in particular when it came to the late submission of evidence, but his reply to that was that once dismissal had been decided, an employee was likely to be in an extremely difficult position on appeal and therefore it was essential that appropriate investigations had been done before the decision to dismiss was taken.

43. A final point that was pursued, was in respect of consistency between the claimant and Mr Hutt. There is no evidence before me that Mr Hutt was the subject of any disciplinary process.

44. In contrast, the respondent's case is that this was clearly misconduct, although it acknowledges that it was not gross misconduct. Nevertheless, Miss Jennings', (the respondent's Counsel), submission was that an error of judgment of this type is sufficiently serious to amount to misconduct. This was an important invitation which had been accepted and the claimant was expected to be there but did not show up. She contended that the evidence showed that he exhibited a lack of insight and because this was a further act of misconduct, the final written warning, which itself was a consequence of the first written warning, was triggered. Therefore, it was in the band of reasonable responses to dismiss. She argued that even if there was a procedural flaw, which she did not accept, it would have made no difference to the outcome, and that were I to find that there was some unfairness here, there was a substantial contributory fault. Unsurprisingly, Mr Anastasiades disagreed with those aspects of her submission.

45. As far as the breach of contract claim is concerned, Mr Anastasiades emphasised the claimant's oral evidence, the unsatisfactoriness of the respondent having no copy of the claimant's current contract and urging me to give the benefit of the doubt to the claimant. Miss Jennings reminded me that the burden of proof is on the claimant and pointed to the documentary evidence such that it is.

46. Against that background then, I turn to my conclusions.

Conclusions

47. I deal firstly with unfair dismissal and the reason for dismissal. I am satisfied that the reason for the dismissal in this case was the triggering of a final written warning because of the events of 10 May 2017, which amounted to the failure to attend the dinner, an invitation accepted in the claimant's capacity as an employee of the respondent. I do not find any evidence that this was some pretext for some other reason for dismissal.

48. It follows that I am satisfied that the respondent has discharged the burden of proof and that the reason for dismissal here is conduct, which is a potentially fair reason.

49. It follows that I must consider the test of fairness and be careful not to substitute my own view for that of the employer. Nevertheless, it does fall to tribunals to determine the parameters of the band of reasonable responses; we are not simply a rubber stamp for any decision that an employer would make.

50. I start with the substance. The essence of the misconduct is the claimant's choice in not attending the Ageas event. His explanation, latent other business, was accepted, but the error of judgment that he is said to have committed is not to have managed his time effectively, or at least not to have shown up having failed to do so. It seems to me, looking at the evidence, that it is clear that this caused serious embarrassment at the time and that this was taken up at a high level.

51. The law recognises that some tasks require a corresponding high standard of conduct. The classic example of that is Alidair Ltd. v Taylor, where the employee was involved in a safety critical activity landing a plane. Well I hope no one takes any offence if I say that insurance, and the world of insurance, is not in that category, but nevertheless, it is an industry where relationships are important. I do not imagine that Ageas would spend substantial amounts of money on a formal dinner, or the respondent's on putting up its staff in hotels in Manchester to go on conferences or industry events, if it was not about those relationships. This was not simply an invitation to a social event. This was an invitation to do with work.

52. It seems to me, that it was within the band of reasonable responses of an employer to regard a failure to attend, what was essentially a work event, as a matter of misconduct. Some employers might have taken the view that the claimant urges upon me. I can understand his point of view, he was after all doing some other work for the respondent, but I cannot find on this evidence, that it was outside the range of reasonable responses to conclude that a failure to attend at something that he was scheduled to attend at, was not misconduct, that it was so trivial as not to cross that threshold.

53. In terms of the substance of this decision, it seems to me that it was a substantively one open to the employer. The employer has recognised that it was not gross misconduct, so this is conduct which would not of itself easily justify dismissal and I will come on to the question whether dismissal was fair.

54. Before I do so I will turn to the process. I do not find on this evidence that there was a failure in the process. That is not to say that it is above criticism. There was an adequate investigation, the claimant to his credit gave a consistent account, perhaps he lacked a little insight at times into the impact of his actions, but I do not think he was ever dishonest in his account or evasive. He was given no real time to respond to the further evidence produced by Mr Guttridge and that would have been a significant failure in the process had the claimant not had the opportunity to address that evidence at the appeal stage. I do not accept Mr Anastasiades

submission that it was too late by the time of the appeal, there was no reason for me to conclude that Mr Melia did not go about his appeal task diligently and I note that the claimant had appealed previously to previous decisions with a measure of success. So, he had the opportunity to address the impact of those statements at the appeal stage and that it seems to me addresses any potential procedural problem there.

55. I am not of the view that the failure to speak to Mr Brierley was material in this case because the claimant's explanation for not attending was accepted, the question was whether it was a satisfactory explanation and for the reasons I have given it was open to the respondent to conclude that it was not.

56. I do not find that there was procedural error here. As far as consistency is concerned, the only evidence I have got points to Mr Hutt not having been dealt with in a disciplinary fashion. Consistency in approach can affect fairness, but there are key differences here between the two men. The claimant was the senior of the two and Mr Hutt reported to him. I have no evidence to show that Mr Hutt had previous warnings outstanding against him, so I cannot say that this is a case of proper comparison.

57. Turning then to the decision to dismiss, given that there was a final written warning, given that it was open to the employer to find that this was misconduct, I am driven to the conclusion that the decision to dismiss was within the band of reasonable responses. I have had regard to the claimant's length of service and whether that ought to have been taken into account, but noted that that was taken into account when the final written warning was imposed earlier, or at the end of the previous year.

58. So, for all of those reasons therefore, I have come to the conclusion that the dismissal was fair. It was a hard set of circumstances. Harsh for the claimant perhaps, but I cannot say that it was an unlawful dismissal in that sense.

59. I then turn to the breach of contract claim and again sadly from the claimant's perspective, I do not find that this claim is established on the facts. The documentary evidence points to the notice period in his case being three months. I do not suggest for one moment that he was seeking to mislead me by his recollection, but the only concrete evidence that I have is his previous contract of employment, what is said in the employee change form at page 53, and what is not said in the promotion offer letter at page 54. All of that is more consistent with a three month notice period than it is with a six month notice period.

60. I apply the balance of probabilities assessing the evidence objectively and I come to the conclusion that the more probable explanation is that he is one of those Associate Directors, the majority of them it appears, who had a three month notice period.

61. So, for those reasons the claims are dismissed.

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Employment Judge Foxwell

Date: …12/11/18…..

Sent to the parties on: .....

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For the Tribunal Office