THE EMPLOYMENT TRIBUNALS

Claimant: **Mr N Emson**

Respondent: **The Trustees of the Late Earl of Strathmore's Will**

Heard at: **North Shields** **On:** **10, 11 & 12 September 2018**

Before: **Employment Judge Arullendran**

Representation:

Claimant: **Mr K McNerney of Counsel**
Respondent: **Mr B Harwood-Ferreira of Counsel**

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1 The claimant's application for an adjournment is refused.

2 The claimant's claim for unfair dismissal is not well-founded and is dismissed.

3 The claimant's claim for wrongful dismissal is well-founded. However, no compensation is payable by the respondent to the claimant.

4 The claimant's claim under section 38 of the Employment Act 2002 is not well-founded and is dismissed.

REASONS

1 The issues to be determined by the Employment Tribunal were drawn up by Mr McNerney with the agreement of the respondent's counsel and some amendments by the Tribunal. They were agreed by all parties as follows:

1.1 Was the claimant employed on a fixed term contract?

1.2 Was the end date for that fixed term the decision by the claimant to elect for retirement?

1.3 Was the claimant required to give the respondent reasonable notice of retirement?

1.4 Had the 18th Earl agreed to a contract of employment which he could not terminate and indeed the only party that could terminate it was the claimant by notice of his retirement?

1.5 Was there an agreement in October 2014 between the 18th Earl and the claimant that the claimant could stay on for a further four years?

1.6 Was there an agreement with the 19th Earl on 5 January 2017 for the claimant to stay in post until 1 February 2018?

1.7 Was a statement of initial employment particulars further to section 1 of the Employment Rights act 1996 provided to the claimant?

1.8 If a statement of particulars was issued, was it consistent with the actual terms agreed between the claimant and the 18th Earl?

1.9 If the claimant is successful in his claim that no statement of particulars was issued, what level of compensation further to section 38 subsection (2) and subsection (3) of the Employment Act 2002 should be awarded?

1.10 What was the reason for dismissal?

1.11 If it is found that the claimant's dismissal was by reason of redundancy, did the respondent do the following:

(a) consult genuinely as to the reason for redundancy;
(b) consider reasonably the claimant's points as to why the absorption of one role by the other was not reasonable;
(c) search for alternative employment which would still have incurred the cost saving of the claimant's role;
(d) search for alternative ways of saving the claimant's wage of £12,000 per annum rather than dismissing him;
(e) fail to hold an appeal hearing against the dismissal?

1.12 If the respondent had followed a fair procedure, what is the chance that the claimant would have been dismissed in any event?

1.13 Was the dismissal fair under section 98(4) of the Employment Rights Act 1996 and did the respondent act within the band of reasonable responses?

1.14 If it is found that the claimant was on a fixed term contract terminable by his retirement, what would have been the date of that retirement?

1.15 Did the fixed term contract provide for notice to be served by the respondent prior to the election by the claimant of his retirement date?

1.16 Given the following what, in the absence of an express term of notice, either orally or in writing, as agreed between the parties, would have been a reasonable period of notice:

(1) The claimant's approximately 13 years of service;

(2) The seniority of the claimant being Shoot Manager;

(3) The cyclical nature with a shooting season beginning on 12 August and ending on 1 February.

1.17 Was there an unreasonable failure by either party to follow the ACAS Code on disciplinary and grievance procedures?

2 I was provided with a joint bundle of documents consisting of 194 pages and I heard witness evidence from the claimant, John Gordon – Chairman of Trustees, and Jamie Younger – Accountant and Trustee.

Preliminary issue

3 The claimant made an application for an adjournment on the basis that his wife's claim was adjourned as she was unwell and could not attend the Employment Tribunal hearing on 10 September 2018. An adjournment having been granted in the case of Mrs Emson, the request for an adjournment of this claimant's hearing on 10 September 2018 is refused. I have considered what Mr Emson's counsel has said about the two claims being linked, however as the claimants were dismissed on entirely separate dates through entirely separate procedures I find that it would be possible for Mr Emson's claim to be heard separately from that of Mrs Emson's case and for both parties to have a fair hearing, particularly as Mr McNerney has not argued that Mrs Emson wished to give evidence in Mr Emson's case. In the circumstances, I find that there is no evidence of exceptional circumstances, keeping in mind the overriding objective, and therefore the application for an adjournment is refused.

4 The facts

The findings of fact are based upon the evidence adduced at the Tribunal hearing and are made on the balance of probabilities.

4.1 The claimant began his employment with the respondent in February 2004 and was employed as a shoot manager at the respondent's Hollwick Estate, which includes a grouse moor and the maintenance of the building estate which was administered by third party, WHT Salvin, who are based at Barnard Castle. The claimant's employment commenced with a verbal contract between the claimant and the late Earl of Strathmore and the claimant was paid £1,000 per month gross and he had the use of a company car, namely a Land Rover Discovery. The claimant says that, in addition to his duties on the moor as a shoot manager, he also carried out duties as a minder for the late Earl, helping him when he was drunk and assisting him with family matters such as his two divorces.

4.2 The claimant says that the late Earl had assured him that the job of shoot manager was his until he elected to retire and he relies on the letter from the late Earl dated 18 March 2015, at pages 59-60 of the bundle, which states in terms of the claimant's retirement, "All I was really asking was that you give me a decent bit of notice". The letter of 18 March was written in reply to the claimant's e-mail dated 13 March, which can be seen at pages 56-58 of the bundle. This e-mail refers to an earlier letter from the Earl but the Employment Tribunal has not had sight of that document. However, it is clear from page 56 that the claimant was upset about the Earl taking action to dismiss him as the claimant states, "The first item that concerns me is as to whether this letter is part of the dismissal procedure". The claimant also refers to the fact that he had been happy to look after the Earl whilst he had a dependency on alcohol, despite the verbal and physical abuse, as a friend. The claimant refers on page 57 to a discussion he had with the Earl around October 2014 where he says the Earl had suggested it was time for the claimant to retire and that after some discussion it was agreed that he would stay on for another four years.

4.3 On 31 March 2015 the late Earl wrote to the claimant, which can be seen at page 61 of the bundle, about signing an up to date contract of employment and he asked the claimant to sign such a contract. However, the parties have not produced copies of the contract and the claimant's evidence is that he never received a contract at that time. The claimant says that when he began his employment with the late Earl there was no mention of holidays or sick pay and the oral contract was agreed over the shaking of hands. He says that the Earl said that the claimant and his wife could have their jobs for as long as they wanted them. The claimant says that he was told repeatedly by the Earl that the job was his until he decided to retire and this was witnessed by Andrew Dent, the head keeper, and Mr Laidlaw but he has not called Mr Dent or anyone else he says was present at these discussions as a witness to give evidence to this effect, nor have any other employees from the estate or the late Earl's family been called to give evidence. The claimant says the agreement was that he could have his job for his "working life" and that this means that he had a fixed term contract.

4.4 The late Earl passed away in early 2016 and the Trustees of the Earl's will took over as the claimant's employer. The claimant wrote to Mr Gordon, who is the Chairman of the Trustees, on 19 April 2016 and this can be seen at pages 76-78 of the bundle; he stated that he had an oral agreement with the late Earl to the effect that he could stay in his job as long as he liked.

4.5 Around the end of 2016 or the beginning of 2017 the claimant was asked to sign a contract of employment, a copy of which can be seen at pages 169 -180 of the bundle. The claimant says he looked at the contract for approximately 30 minutes and handed it back to the land agent, Willie Salvin, unsigned because it did not reflect his understanding of the

agreement he had with the late Earl and the claimant says that he told the agent to discuss it with Mr Gordon and rewrite it, but he never heard back from the respondent about the contract. The claimant's evidence is that he did not tell the land agent or Mr Gordon which specific clauses he disagreed with and he stated in cross-examination that he did not read many of the paragraphs but argues that he could use the fully expensed car for his personal use, whereas the contract states it was for business use only. The claimant wrote to Mr Gordon on 5 January 2017, which can be seen at pages 82-83 of the bundle, referring to this draft contract and stated that he had spoken to the current Earl and that he would remain in place until "the end of the season" and that if the new tenant wanted him to stay on for one season he would agree to that. The claimant wrote to Mr Gordon again on 12 January 2017, which can be seen at page 81, saying he "did not sign the so called contract" and that his job was not just running the moor but also looking after the Earl through thick and thin for 14 years. The claimant again refers to staying on at the Estate for that season but, although the date and time had not been agreed for when it would come to an end, it would not be before 1 February 2018.

4.6 Mr Gordon proposed to meet with the claimant in London on 7 March 2017, as can be seen in his e-mail of 23 February which is at page 85 of the bundle. Prior to attending this meeting, Mr Younger send an e-mail to Mr Gordon dated 6 March, which can be seen at page 86 of the bundle, setting out the financial losses made by the Estate and enclosing copies of the relevant accounts. The uncontested evidence of Mr Younger is that there was a fall in the income from the shoot season in 2015 and that the income from the 2016 season was nil. He states "the 31st March 2017 accounts haven't been started yet but the shoot account will be horrible". Mr Younger goes on to say in his e-mail that the Trust would be in debt of £110,000 plus they were not expecting to have any grouse income that year. The claimant accepted in cross-examination that the shoot had been losing money and that there was a shortage of birds for the current shoot season. However, he argues that the shoot is cyclical and goes up and down over a period of seven years.

4.7 The claimant met with Mr Gordon on 7 March 2017 and at this meeting Mr Gordon set out the financial difficulties the Estate was experiencing. As a result, Mr Gordon told the claimant that the Trustees had identified that the position of shoot manager was at risk of redundancy, that this was only a proposal at this stage and no final decision was to be made until there had been a formal consultation with the claimant. Mr Gordon also discussed the possibility that the claimant could retire at the end of the season on 1 February 2018 as an alternative to the redundancy as the claimant had previously indicated himself to Mr Gordon, particularly given his standing at the Estate and the length of his service. Mr Gordon also offered to extend a day's shooting in January 2018 to the claimant and his friends, which is valued at between £4,000 and £5,000, and this was on the understanding that he would then retire on 1 February.

4.8 The claimant wrote to Mr Gordon on 8 March 2018, which can be seen at pages 95-96 of the bundle, thanking him for the lunch the previous day and stating that he greatly appreciated Mr Gordon's kind words about his employment at the Estate over the last 13 years. The claimant said in this letter that he was happy to stand down from his employment on 1 February 2018.

4.9 Mr Gordon wrote an e-mail to the claimant on 9 March 2018, which can be seen at page 97, setting out the reasons why the respondent had to consider redundancy but states that no decision had been made. He asked the claimant to confirm if he intended to leave at the end of the season and provide that confirmation in writing. The claimant replied on 19 March, which can be seen at page 98, stating, "I agree to go on 1 February 2018 the end of the shooting season as agreed at our recent meeting in London". However, in this e-mail the claimant also states that he did not want to give up his employment and suggests the respondent is acting in breach of contract by forcing the claimant to leave through one of two options of either retirement or redundancy. Mr Gordon wrote to the claimant on 3 April 2017, which can be seen at pages 104-105 of the bundle, stating that the claimant had not been given two choices and reiterated that no decision had been made regarding the redundancy and that the claimant had not been given an ultimatum. Mr Gordon stated that the claimant did not have a job for life and that he would be making arrangements for the formal redundancy consultation to take place.

4.10 The claimant was invited by Mr Gordon to attend a consultation meeting on 11 April, as can be seen at page 106-107 of the bundle. He sets out the financial position of the Estate and states that the respondent considers his position could be absorbed by the head keeper's position. Mr Gordon stated in cross-examination that the decision to carry out the redundancy consultation was taken by the Board of Trustees and that the Board was of the opinion that the claimant's duties could be carried out by the head keeper, but not the other way around. In the invitation to the meeting Mr Gordon sets out that no formal decision would be made until the consultation had been completed.

4.11 The claimant replied to Mr Gordon on 6 April 2017, which can be seen at page 108, stating that "I do not think that there is anything further to be gained by having yet another meeting to discuss my future at Hollwick", and that he agreed to the option of leaving on 1 February 2018 "albeit reluctantly for all the reasons I have given already". Mr Gordon thought that the latter statement was at odds with his earlier discussions which had taken place with the claimant and he set this out in his e-mail which can be seen at page 110 of the bundle as the reason for continuing with the formal redundancy process.

4.12 The claimant asked for the meeting of 11 April to be postponed as he wanted to get legal advice. He then sent an e-mail to the respondent dated 27 April 2017, which can be seen at pages 113-117, setting out his objections which included not receiving 12 months' notice as reasonable

notice and he stated that he did not accept that it was a genuine redundancy. Mr Gordon replied to the claimant on 27 April 2017, which can be seen at page 118, advising the claimant to refer future correspondence to Jamie Younger as Mr Gordon had to go into hospital for some time.

4.13 The claimant was invited to attend a consultation meeting with Mr Younger on 3 May 2017, which can be seen at page 120 of the bundle, and he was advised of his right to be accompanied at this meeting. The minutes of the consultation meeting are at page 121 of the bundle. Mr Younger set out the parameters for the meeting as being a redundancy consultation and for the claimant to set out his views on the proposals in as much detail as he wished in order for the Trustees to take his views fully into account. The claimant responded by stating that he would not be making any further comment and that he had put everything he wanted to say in his previous e-mail and would be contacting his lawyer. The meeting lasted approximately five minutes; the claimant's account being that it lasted less than 5 minutes, but was noted in the minutes as lasting 5 minutes so that Mr Younger could claim his fee for attending the meeting.

4.14 Mr Younger wrote to the claimant on 5 May 2017, which can be seen at pages 122-125 of the bundle, dismissing the claimant for reasons of redundancy with 12 weeks' payment in lieu of notice and a statutory redundancy payment. Mr Younger addresses the points raised by the claimant in his e-mail of 27 April 2017 in the letter of dismissal and advised the claimant that there was no suitable alternative employment available.

4.15 The claimant sent an e-mail to the respondent on 8 May 2017, which can be seen at page 126, and stated he was appealing against the decision to dismiss him and the respondent replied on 10 May, as can be seen at page 128, confirming the names of the executors who would hear the appeal and asking the claimant to forward his grounds of appeal. The claimant replied on the same day and this can be seen at pages 130-132 of the bundle stating he really could not see what could be gained from an appeal meeting and that the impasse could only be resolved by third parties. Mr Younger sent a further e-mail to the claimant on 10 May, which can be seen at page 134, asking the claimant if he wanted to appeal. The claimant sent an e-mail to the respondent on 6 June 2017, which can be seen at pages 140-142 of the bundle, stating that he would not be seeking any further involvement with the executor and that his intention was to start proceedings in the Employment Tribunal.

4.16 Mr Younger again sought clarification from the claimant on 13 June as to whether he wished to appeal and this can be seen at page 147 of the bundle. The claimant replied on 13 June, which can be seen at pages 148-151 of the bundle. He starts his e-mail by referring to ACAS conciliation and Employment Tribunal proceedings and states that, "Further meeting with your fellow Trustees is unlikely to resolve my grievance". Although he states he is appealing, the claimant says he has

passed the matter to his solicitors. No correspondence appears in the bundle from the claimant or the respondent's solicitors as to what attempts were then made to try and deal with the claimant's appeal.

4.17 In evidence, the claimant said that he is not saying that there was anything wrong with the redundancy process but he says the Trustees should have provided him with a reasonable settlement because he had looked after the late Earl in addition to working on the moor. The claimant also says that he had been told by many unnamed people that the respondent wanted to dismiss him because he was a part of the old regime.

4.18 Mr Younger gave uncontested evidence to the tribunal that he has had dealings with many businesses similar to that of the respondent in his capacity as an accountant. His evidence is that he is familiar with other organisations which employ shoot managers and they are employed under terms and conditions which are similar to those set out in the proposed contract provided by the respondent to the claimant, as can be seen at pages 169 -180 of the bundle. Mr Younger's evidence is that shoot managers are normally employed under a contract of employment which provides for three months' notice to be given.

4.19 The claimant submits that he had an oral contract with the late Earl of Strathmore who had provided him with a job for life and this would only come to an end when he elected to retire. The claimant also submits that he was entitled to receive reasonable notice of 12 months. The claimant submits that he was not provided with a section 1 statement of terms and conditions of employment as the document provided to him was incorrect. He further submits that the dismissal was not for redundancy and this is evidenced by Mr Gordon offering the claimant one more year's employment to 1 February 2018 and a free shoot, therefore cost cutting could not have been the real reason for the dismissal. However, even if the reason for dismissal was redundancy, the claimant submits that there was no real consultation as the Trustees had already made the decision to dismiss him before the figures for the current shoot were before them and it was unfair because the respondent did not provide the claimant with an appeal. Regarding the breach of contract claim, the claimant submits that he would have carried on working until he was 75 years old and therefore he claims his losses to 2 December 2022.

4.20 The respondent submits that the contract of employment was an oral contract between the claimant and the late Earl, but the claimant has failed to produce any witness evidence to the terms of the agreement, despite saying that Andrew Dent and Richard Laidlaw were present during the discussions. The claimant could also have called Lady Strathmore or the current Earl as witnesses but chose not to do so and gives no reason why they have not attended the hearing.

4.21 The respondent submits that the claimant is not a credible witness in that his evidence was confused, inconsistent and ambiguous and often he did not listen to the questions put to him. The respondent submits that the

claimant had stated his intention to retire on 1 February 2018 and that he did not have a job for life. The respondent refers to the letter at page 60 of the bundle which talks about the claimant's retirement and notice required to be given and, therefore, the respondent submits that this is an open-ended contract. The respondent submits that the reason for dismissal was redundancy and that the respondent has set out on page 86 the business case for redundancy. Regarding the consultation meeting, the respondent submits that the claimant only stayed for five minutes and he had not engaged properly with the redundancy process, nor did he offer any alternatives to the redundancy. The respondent also submits that it was the claimant's decision not to continue with the appeal as he told the respondent to communicate with his solicitor. The respondent submits that the claimant was paid 12 weeks' notice pay and a redundancy payment and therefore he has received all the payments in full. The respondent submits that the claimant was provided with a section 1 statement but he chose not to sign it and he never tried to address what was wrong with it with the respondent in any event.

5 **The law**

5.1 I refer myself to section 98(4) of the Employment Rights Act 1996 with regard to the law on unfair dismissal and which states

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair 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 employers 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."

5.2 I refer myself to section 139 of the Employment Rights Act 1996 with regard to the definition of redundancy and which states

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

(a) the fact that his employer has ceased or intends to cease

(i) to carry on business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of the business

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish."

5.3 I refer myself to the case of **Hollister v NFU [1979] ICR 542** in which the Court of Appeal held that a good commercial reason was enough to justify the decision to make redundancies.

5.4 I also refer myself to the case of **James W Cook & Company (Wivenhoe) Limited v Tipper & Others [1990] ICR 716** in which the Court of Appeal stressed that Tribunals are not at liberty to investigate the commercial and economic reasons behind a decision to close. However, it could require that the decision to make redundancies was based on proper information and, in short, that the Tribunal was entitled to ask whether a decision to make redundancies was genuine, but not whether it was wise.

5.5 I refer myself to the case of **Polkey v A E Dayton Services Limited [1988] ICR 142** in which the House of Lords decided that a failure to follow correct procedures was likely to make a dismissal unfair unless, in exceptional cases, the employer could reasonably have concluded that doing so would have been utterly useless or futile. The question of whether the employee would have been dismissed even if a fair procedure had been followed will be relevant to the amount of compensation payable.

5.6 I note that the ACAS Code does not apply to redundancy dismissals but does apply to ordinary unfair dismissal and wrongful dismissal claims.

5.7 I refer myself to the case of **Thomas & Betts Manufacturing Limited v Harding [1980] IRLR 255** in which the Court of Appeal held that, where there are no customary arrangements or agreed procedures to be considered, employers have flexibility in finding the pool for selection. The employer need only show that they have applied their minds to the problem and acted on genuine motives. The Tribunal will judge the employer's choice of pool by asking itself whether it fell within the range of reasonable responses available to the employer in the circumstances.

5.8 With regard to the claim of breach of contract, I note that if no notice is specified the courts will imply a term that reasonable notice is to be given. The length of such notice will depend on matters such as custom and practice in the area, trade or profession, the employee's status and the period by which his or her pay is calculated. However, section 86 of the Employment Rights Act 1996 lays down the statutory minimum periods of notice required to terminate a contract of employment.

Conclusions

6 Applying the relevant law to the facts I find that the claimant was employed under the terms of an oral contract. However, as a burden of proof is on the claimant to establish the specific terms of that agreement, I cannot find that the claimant was given a "job for life" or that he was employed on a fixed term contract. The claimant intimated that there were several witnesses to his agreement with the late Earl, but none of them have given any evidence and, therefore, I find that the claimant has failed to discharge the burden of proof that he was ever employed on a fixed term contract which was only to be terminated by the claimant on a

date of his choosing. In coming to this finding, I am persuaded that this was not a term agreed between the parties at the time they entered into the agreement because it lacks certainty and business efficacy, particularly as it would have been wholly inappropriate to create contractual terms which would not enable the employer to dismiss the claimant should he become incapable of performing his duties through ill health, for example, or any other reason. Further the e-mail from the claimant dated 13 March 2015 clearly shows that the previous Earl had started some kind of process which could have led to the claimant's dismissal, which is completely at odds with what the claimant is trying to argue about being employed on a fixed term contract which only he could elect to bring to an end on a date of his choosing. In all the circumstances I find that the claimant was not employed on such a fixed term contract.

7 I find that the claimant did agree to provide the late Earl with reasonable notice of his retirement, as requested in the letter at pages 59-60, and that he did indicate to the respondent on several occasions that he would be retiring on 1 February 2018. However, as the claimant expressed some reservations on each occasion that he said that he would be retiring, apart from the letter dated 8 March 2017, it is understandable that the respondent had no choice but to follow the formal redundancy procedure given the dire straits it found itself in in respect of the accounts at Hollwick Estate and did not accept the claimant's intention to retire on 1 February 2018 as his notice of resignation as it was equivocal. I find that the claimant has failed to prove that he had agreed a variation to his contract with the late Earl in October 2014 to the effect that he would stay employed for a period of four years, as he has set out at page 57 of the bundle. In particular, the claimant has failed to adduce any evidence of such an agreement from the two witnesses he mentions in his e-mail and has failed to provide any explanation as to why they have not attended this hearing. Further, there is no evidence of any consideration having been given for this alleged variation of contract and, as the burden of proof is on the claimant, I do not accept that there was ever an agreement in October 2014 that the claimant would be employed on a fixed term until 1 February 2018. As the claimant expressed reservations each time he wrote to the respondent about retiring on 1 February 2018, I find that there was no agreement between the parties that the claimant would leave on 1 February 2018.

8 I find that the respondent did issue the claimant with a statement of employment particulars which satisfies the terms of section 1 of the Employment Rights Act 1996, although the claimant refused to sign it. As the claimant failed to produce any evidence, other than his oral evidence, as to what the terms and conditions agreed between him and the late Earl were, I am unable to find whether the section 1 statement accurately reflected those terms. Further, as the claimant made no effort to discuss with the respondent or provide the respondent with any amendments to the section 1 statement, I am unable to make any findings as to what the respondent could have done to agree any alternative terms and conditions with the claimant. In any event, I find that the claimant's employment was not to be a minder for the late Earl because there is no evidence that this is the agreement the parties entered into at the commencement of the employment relationship as they are not duties that would ordinarily be expected of a shoot manager. I note that the claimant said several times in evidence that he looked

after the late Earl out of friendship and I find that this was the true basis for the claimant carrying out the minding duties. Even if I am wrong and the claimant was employed as a minder to the late Earl, which I do not accept, the very fact that the Earl was no longer alive would mean that this resulted in at least a partial redundancy situation in respect of those duties and I fail to see why they should have been included in the terms and conditions of employment after 2016. In the circumstances, I find that there was no deficiency in the statement of terms and conditions of employment relating to the claimant's job title and role. As for the company vehicle, there is no evidence that the late Earl agreed to pay for all the claimant's personal mileage, without imposing any limits at all. It is common ground that the vehicle was provided as a tool for carrying out the functions of the post of shoot manager and, as such, in the absence of evidence to the contrary, I find that the clause relating to the use of the vehicle for work purposes accurately reflects the agreement between the parties.

9 Looking at all the evidence in the round, I find that the reason for dismissal, as shown by the respondent, was indeed that of redundancy. The respondent has clearly set out the business case for redundancy in its e-mail of 3 April 2017 on page 86 of the bundle and this was not challenged by the claimant. I find that the respondent did follow a fair redundancy procedure and the claimant accepted that this was the case when he was questioned by the Tribunal. The respondent consulted with the claimant in respect of finding alternatives to the redundancy but the claimant does not appear to have engaged in that consultation process at all and failed to suggest alternatives for the respondent to consider. His attendance at the consultation meeting was less than five minutes, according to the claimant, and this clearly indicates that he did not wish to participate in that process. However, I find that the respondent took all reasonable steps to consider alternatives and the claimant's position as set out in his e-mails of 27 March and 27 April 2017. I find that the respondent did look for alternative employment for the claimant but found that nothing was available at that time and the claimant himself never came up with any options about an alternative role or an alternative to the redundancy. I find that the respondent made reasonable efforts to deal with the claimant's request for an appeal and suggested hearing dates and venues but the claimant did not engage with that process and made it clear that he wanted to deal with matters through his solicitors and, therefore, the respondent did follow a fair procedure and the dismissal and appeal process fell within a range of reasonable processes open to a reasonable employer in those circumstances.

10 As I have found that the reason for dismissal was redundancy, I do not need to go on and consider whether the claimant's alternative argument about the alleged ordinary unfair dismissal is well founded. However, for the sake of completeness, I note that Mr McNerney never put to the respondent's witnesses that they had dismissed the claimant because they did not want him there any longer as he was part of the old regime, which is what the claimant argues in his evidence. Therefore, there is no basis upon which this Employment Tribunal could find that the respondent had dismissed the claimant for that reason.

11 As I have found that the claimant was not employed on a fixed term contract, I must find that the respondent was entitled to terminate the claimant's contract for

a fair reason under section 98 of the Employment Rights Act 1996 and, as I have found that the respondent followed a fair and reasonable procedure, I find that the claimant's claim for unfair dismissal is not well-founded and it is dismissed.

12 As the claimant was not employed on a fixed term contract, I find that his claim for breach of contract in that respect is not well-founded and is dismissed.

13 In the absence of any objective or corroborative evidence from the claimant about what reasonable notice would consist of for the position of shoot manager, other than his oral evidence, and taking into account the evidence of Mr Younger who deals with many estates which employ shoot managers, I find that reasonable notice would mirror the statutory requirements as set out in section 86 of the Employment Rights Act 1996 and that, in this case, amounts to 12 weeks' notice. I have taken into account the matters listed at paragraph 1.16 of the list of issues as drawn up by the parties but there is no objective or corroborative evidence from the claimant that the reasonable period of notice for this post would be longer than the statutory maximum of 12 weeks. I note that the respondent has paid the claimant 12 weeks' wages in lieu of notice and that this satisfies the monetary requirements under section 86 of the Employment Rights Act 1996.

14 I find that, as there was no written term or express term between the parties that the respondent was entitled to summarily dismiss the claimant and make a payment in lieu of notice, the claim for wrongful dismissal is well-founded because the respondent did not have the right to summarily dismiss the claimant. However, as the respondent has already made a payment in respect of 12 weeks' notice pay, there is no compensation to be awarded against the respondent because the claimant has not proved he has suffered any losses as a result of the breach of contract.

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EMPLOYMENT JUDGE ARULLENDRAN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
.....21 September 2018.....