EMPLOYMENT TRIBUNALS

Claimants: Mr D Tickle
Mr S Hopkins
Mr L Burr

Respondent: Sporting Club Leigh Ltd t/a Leigh Centurions

Heard at: Manchester **On:** 26, 27 and 28 November 2019

Before: Employment Judge Sherratt

REPRESENTATION:

Claimants: Mr S Flynn, Counsel
Respondent: Mr M Budworth, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. None of the claimants was wrongfully dismissed.

2. Mr Hopkins was not unfairly dismissed.

3. The respondent made unlawful deductions from the wages of Mr Hopkins and Mr Burr.

REASONS

The Issues

1. The issues to be determined by the Tribunal are:

Samuel Hopkins

Unfair Dismissal

(1) Was the claimant dismissed or was there a consensual termination?

(2) If the claimant was dismissed, then what was the reason for the claimant's dismissal?

(3) Was the reason for dismissal a potentially fair reason within the meaning of section 98(2) Employment Rights Act 1996 ("ERA")?

(4) Alternatively, was the reason for dismissal for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position that the claimant held?

(5) If the reason for the claimant's dismissal was a potentially fair reason or SOSR, was it fair within the meaning of section 98(4)?

(6) If the claimant was unfairly dismissed, then should any compensation be reduced in accordance with the principl4es set out in **Polkey v A E Dayton Services Ltd]1988] ICR 142**?

(7) If the claimant was unfairly dismissed, then was he guilty of conduct which would have justified a gross dismissal so that any compensation awarded should be reduced?

Wrongful Dismissal/Breach of Contract

(8) Did the claimant's contract signed on 18 June 2017 take legal effect?

(9) What were the terms of the claimant's contract?

(a) What was the status of the Operational Rules?

(10) Was the Club legally entitled to terminate the claimant's contract on 8 January 2018?

(11) If the respondent was legally entitled to terminate the contract on 8 January 2018, did it do so in accordance with the terms of the contract?

Unlawful Deduction

(12) Did the respondent make a deduction from the claimant's wage in the amount claimed?

(13) Did the claimant sign a Code of Conduct that authorised the imposition of fines where transgressions occurred?

(14) Are the terms of any Code of Conduct signed legally enforceable?

(15) If the claimant signed a Code of Conduct that authorised the imposition of fines where transgressions occurred and those terms are lawful, then did the respondent comply with the terms of the same when making any deduction?

Danny Tickle

Wrongful Dismissal/Breach of Contract

(16) Did the claimant's contract signed on or around 25 July 2017 take legal effect?

(17) If the contract did take effect, what were the terms of the contract?

(a) What was the status of the Operational Rules?

(b) What was meant by the term "the current Season" in clause 2.4?

(18) Was the Club legally entitled to terminate the contract on 5 January 2018?

(19) If the respondent was legally entitled to terminate the contract on 5 January 2018, did it do so in accordance with the terms of the contract?

Lachlan Burr

Wrongful Dismissal/Breach of Contract

(20) What were the terms of the claimant's contract?

(a) What was the status of the Operational Rules?

(21) Was the Club legally entitled to terminate the claimant's contract on 16 January 2018?

(22) If the respondent was legally entitled to terminate the contract on 16 January 2018, did it do so in accordance with the terms of the contract?

Unlawful Deduction

(23) Did the respondent make a deduction from the claimant's wage in the amount claimed?

(24) Did the claimant sign a Code of Conduct that authorised the imposition of fines where transgressions occurred?

(25) Are the terms of any Code of Conduct signed legally enforceable?

(26) If the claimant signed a Code of Conduct that authorised the imposition of fines where transgressions occurred and those terms are lawful, then did the respondent comply with the terms of the same when making any deductions?

The Claimants

2. The claimants are all professional rugby league footballers who played for the respondent Club.

The Respondent

3. The respondent is a Rugby League Club known as "Leigh Centurions". The respondent is given financial support by its principal shareholder, Derek Beaumont, through another company in which he is also the principal shareholder.

4. The Club was playing in the Super League in the 2016/2017 season but on 30 September 2017 it lost a "Million Pound" game with Catalan Dragons which resulted in the Centurions being relegated from Super League into the Championship.

5. Relegation meant that the Club had to play in a lower league with a much reduced level of financial support from the league and other sources being available.

The witnesses

6. The respondent called evidence from Karen Moorhouse, the Rugby Football League's Chief Regulatory Officer; Matthew Chantler, the Club's Chief Executive Officer; Neil Jukes who was at the relevant time the respondent's Head Coach; and Derek Beaumont.

7. Each claimant gave evidence and was cross examined. Mr Burr gave his evidence via video link from New Zealand.

8. There was a bundle of documents containing more than 650 pages.

The Player Contract

9. The Rugby Football League Limited provides a document entitled "Rugby League Full-Time Player's Contract of Employment". looking in particular at the 2015 edition. It is a standard document although some players by agreement with the Club have certain sections removed and there are a number of standard clauses that can in appropriate cases be added.

10. For the purposes of the Agreement "season" has the meaning specified in the Operational Rules of the Rugby Football League. This appears to be from the date of the first league match in a season until the following 30 November.

11. The document has 18 pages. Pages 1 and 2 of the document are the "Professional Registration Form" which has section 1 completed and signed by the player and section 2 completed and signed by the Club. The player provides some personal and background information. The Club provides other information that is required by the League.

12. Section 1 of the Contract deals with conditions precedent. Paragraph 1.1 relates to a physical and mental fitness assessment. Paragraph 1.2 deals with the player's immigration status and/or the right to work in the United Kingdom. Paragraph 1.3 provides that:

> "This Agreement is conditional upon the League accepting the registration of the Player, following completion of the Registration Form, in accordance with the Regulations and the Club receiving acknowledgement of that registration from the League. You agree that if the League does not accept your registration as a Player then the Club may terminate the Agreement immediately without notice or payment in lieu of notice provided that where the League does not accept the registration for a reason relating to the Club then the Club must exercise its rights under this clause within 14 days of the date of this Agreement."

13. Section 2 is headed “Employment, Remuneration and Benefits”. Paragraph 2.1 describes the engagement as a professional rugby league player on the terms of the Agreement, and paragraph 2.2 provides that it cancels and supersedes any previous contracts in relation to the period of time covered by the Agreement.

14. Clause 2.4 is the most relevant clause for the purposes of this hearing:

> “If it is Confirmed that the Club will start the next Season in a lower league competition than the one it started the current Season in either the Club or the Player may terminate this Agreement by providing written notice to the other on or before the earlier of:
>
> (i) The 30 November following such Confirmation taking effect; or
>
> (ii) one month after the date such confirmation takes effect.
>
> Any such notice of termination shall take effect on:
>
> (i) where the Player serves the notice of termination, 30 November following such confirmation; and
>
> (ii) where the Club serves the notice of termination the later of:
>
> (A) 30 November following such Confirmation; or
>
> (B) the date three months after the notice of termination.
>
> If either the Club of the Player exercises its rights under this Clause, the Player shall not be entitled to any further payment from the Club except such sums that shall have accrued due at the date the termination takes effect.
>
> For the avoidance of doubt the Player shall remain bound by this Agreement until the date the termination takes effect. If that date is after 30 November in the year in question the Player may, at any time after the notice of termination is served, specify an earlier date (on or after 30 November) when the termination shall take effect. In such circumstances the date of termination shall be such earlier date and the Player shall not be entitled to any further payment from the Club after such date, except, for the avoidance of doubt, any Treatment in accordance with clause 11.
>
> For the purposes of this clause 2.4 ‘Confirmed’ means when it is mathematically not possible (based on the points remaining) fir the Club to avoid starting the next Season in a lower league and any such Confirmation shall take effect on the Monday following the relevant Match or event that makes if mathematically not possible.”

15. Other relevant clauses include under “Player’s Obligations” at 5.1:

> “(h) Will attend all training sessions and meetings as arranged by the appropriate Club official.

(j) Will obey and fulfil every reasonable instruction and direction given by appropriate Club officials…"

16. At paragraph 22 are the disciplinary procedures:

"22.1 The non-contractual Disciplinary Procedure applicable to your employment will be published and from time to time updated by the League. The disciplinary rules contained in the misconduct, anti-doping and disciplinary regulations of the Operational Rules as updated from time to time also form part of this Agreement.

22.2 In appropriate cases and as an alternative to dismissal, the Club may impose a disciplinary sanction which may include: a fine, unpaid suspension; loss of seniority/rank within the Club; reduction in salary; or loss of future pay increment or bonus."

17. Paragraph 26.1 relates to registration with the League and provides that:

"When this Agreement has been signed the Club will seek to register you as a player or to register this Agreement with the League in accordance with the Regulations, prescribed timeframes and you undertake to sign any documents required to facilitate this registration. The League may refuse to register or deregister any Player in accordance with the Regulations."

18. Paragraph 30.7 states:

"Both parties agree to act in good faith in relation to this Agreement and the registration process and herby acknowledge that they will comply with the Guidance Note in relation to their obligations in respect of the registration form, registration process and/or associated matters."

19. Schedule 1 gives the date when the employment will commence, which shall be the date of commencement of a period of continuous employment, unless it is a renewed contract when the period of continuous employment began on the initial start date. The normal end date for the contract is 30 November in any year when the contract "will automatically terminate without the need for notice by either party to the other".

20. Grievance and Disciplinary Procedures are annexed at the end.

21. Taken from Mr Tickle's grounds of complaint the Rugby Football League's Operational Rules provide that:

"Each agreement between a Club and a player in relation to his provision of playing or related services must be in the form of the RFL standard full-time player contract or part-time player contract."

22. The Regulations are defined as the "Constitution and Operational Rules", with clause 1:1:15, submission of registration documentation and contract, providing that:

` "Within five working days of signature each registration form (together with all supporting document) and each full-time or part-time contract entered into with a player (or any variation of the same) must be submitted to the RFL."

23. In its grounds of resistance. the respondent denies that the provisions cited in the Operational Rules have the effect of overriding or supplanting a specific term in a player/club paying contract. Further:

> "Rules regarding re-engagement of players and offers of new employment are irrelevant to and separate from a standing right to terminate after a point where it has been confirmed that a club has been relegated."

The Evidence

24. According to Karen Moorhouse, the Rugby Football League ("RFL") sets Operational Rules which are the regulatory framework within which the member clubs are required to operate. These are separate from any legal obligations imposed elsewhere.

25. The RFL provides a standard player contract which all professional clubs are required to use subject to a limited number of permitted amendments. It is regularly reviewed and as the Governing Body of the sport there is a responsibility to strike the right balance between the interests of the clubs and the players. Any changes are carried out in consultation with the clubs and the players. Each player contract is usually for a fixed term running to the end of a season (30 November). Where a player contract is due to expire at the end of a season, it is usual for the player to seek to enter into a new contract (with either his current club or a new club) during that season for the following season. Such contract would bind both parties (i.e. be in existence) from the date of signature, but the employment under that contract would usually not start until 1 December i.e. the first day of the following season.

26. As to financial distributions in 2017 the respondent Club received £1,735,000 from Super League (Europe) Limited and in 2018 it received £750,000 from the RFL. On 11 October 2017 Super League Europe determined that subject to specified terms and conditions a parachute payment of £500,000 should be paid to Leigh.

27. Dealing with clause 2.4 of the contract, when it was being reviewed ahead of the 2012 re-issue the RFL was concerned that in the light of the usual fixed-term nature of the contract and the difference in monetary distributions there was a significant chance that any relegated club would face financial difficulties which in turn would damage the sport, the club, other clubs and the interests of players. Following consultation, it was determined that a clause should be added to the standard contract allowing either the club or the player to terminate in the event of the club being relegated. Clause 2.4 reflects the reality of the situation that in the event of relegation a club will inevitably need to reduce its playing wage bill. The wording of clause 2.4 evolved between the 2012 and 2015 versions, but the purpose of the amendments was to ensure that a player would always receive three months' notice of termination.

28. The evidence of Karen Moorhouse was to the effect that clause 2.4 does not provide that the Player has to be playing for the Club in the current Season for the

Club (or Player) to rely on the clause: the test is purely in relation to the league competition the Club was playing in. This is entirely in keeping with the rationale for the clause. Equally, and against the same backdrop, it does not provide that it can only be used in relation to contracts where the term of employment related to the current Season.

29. According to Ms Moorhouse clause 2.4 is drafted as being mutual, exercisable by club or player, as the RFL was also aware that players may not wish to play at Championship level and may therefore also want the opportunity to leave a relegated club. Clause 2.4 may be removed by agreement between the club and the player, and there is a supplemental clause to this effect to be inserted where appropriate.

30. The RFL issues a guidance note alongside the standard player contract and in relation to 2.4 it provides that:

> "Subject to giving notice as set out in the contract, the contract may be terminated by either party if the Club is relegated. In the case of termination by a Club this will require a minimum of three months' notice. If a Club is considering exercising its rights under this clause then it should first consult with the player to allow him the opportunity to put forward any alternative. At the time of negotiation a club and player may agree to disapply this provision in its entirety or agree that different financial terms will apply depending on the league the Club is playing in."

31. In cross examination she confirmed that for the purposes of 2.4 "the next season" would be from 1 December in the current calendar year with first match of the season being normally towards the end of January or at the beginning of February in the subsequent calendar year. The last match of the season would normally be around the beginning of October.

32. Matthew Chantler was a Commercial Solicitor specialising in sports law before becoming Chief Executive Office of the respondent Club in March 2016. The Club was promoted to Super League in 2016 and increased its expenditure significantly on both players and other staff. Although income was increased the costs also increased so no significant profit was generated from the Super League season. There were no assets or cash reserves to assist following relegation.

33. In the 2017 season the Club invested in players' wages to the tune of some £1.8 million.

34. Immediately following 30 September 2017 when the Club lost the "Million Pound Game" which meant relegation to the Championship, there were Board discussions regarding implementing a significant cost-cutting plan for 2018. He advised Mr Beaumont of the need to act quickly to ensure they could utilise clause 2.4 of the standard player contracts, and he said he would meet with all potentially affected employees to discuss the options available under the contract. He met the players between 3 and 6 October 2017 and:

> "During the meeting I explained that an option available to the Club was to utilise clause 2.4 and that relegation from Super League had a significant

> impact on the business, with the business forecasting a loss of revenue of £2million. I asked if they understood the contract, offered them the chance to discuss this in detail with me and asked them if they had any thoughts or suggestions."

35. He was advised by Derek Beaumont, Neil Jukes and Keiron Cunningham, Head of Rugby, as to which players should be given notice to terminate their contracts, and he started to send out notices from 5 October, either after he had met with the player or the player had rejected the chance to meet:

> "I was aware that there was a potential issue with both Hopkins and Tickle due to their insistence that they had a valid contract for the 2018 season, which the Club throughout denied. As it was an incredibly busy and difficult time at the Club that operates with minimal staff…for all off-field matters I decided to be risk averse and, although the Club did not believe that the two players had contracts for 2018, to serve notice on the alleged valid contracts for 2018 as it also resulted in a minimal financial payment but took away any risk to the Club."

36. As regards Mr Tickle, in July 2017 he drafted a contract based on what he believed the position to be during negotiations between the player and the Club, but he did not receive confirmation from either Mr Jukes or Mr Beaumont that the deal and contract had been agreed and therefore the Club did not sign or register the contract with t he RFL as an agreement was never concluded. On 5 October he met with Mr Tickle to discuss relegation and the options available to both parties under the contract. He asked him for his thoughts and discussed his contractual position with him. After notice was served on him Mr Tickle raised a grievance with the Club. He met with Mr Tickle and considered his grievance before sending an email dismissing it. There was an appeal to a Club Director who dismissed the appeal.

37. In respect of Mr Burr, he met with him on 6 October to discuss the contract and the options available under it.

38. In June 2018 he liaised with Samuel Hopkins regarding a contract for the following year and although they signed and dated the contract, as he did not receive authority from Derek Beaumont, the sole director, he did not register the contract with the RFL. The Club's procedure required him to obtain authority from Derek Beaumont before registering any contract with the RFL. On 6 October 2017 he met with Sam Hopkins to discuss the contract and the options available under it.

39. The cross examination of Mr Chantler started with a discussion of Mr Hopkins. It was confirmed that in the ET1 the dates of employment were said to be from 1 December 2015 to 12 December 2017, and in the ET3 the dates of employment given by the claimant were ticked as being correct. The grounds of resistance, which were not drafted by Mr Chantler, said in respect of Mr Hopkins that the applicable playing contract was the signed contract dated 1 December 2015 employing the claimant until 30 November 2017. A later contract dated 18 June 2017 was not lodged with the Governing Body and therefore did not take regulatory or legal effect. The notice to terminate given on 9 October 2017 was in relation to employment coming to the end of a fixed term on 30 November 2017 in any event.

40. The response went on at paragraph 3 to state:

> "Alternatively, the Club faithfully and lawfully invoked an agreed express provision for early termination. If, which is denied, the later contract took proper regulatory and legal effect then, by clause 2.2, it took effect on 18 June 2017 and the current season was therefore the season Leigh were playing in Super League and there was no disapplication of clause 2.4."

41. He agreed that he had sent a letter to Mr Hopkins on 9 October 2017 (attached to an email on that date). The letter was further to their meeting and the options available under the contract. He referred to the Club forecasting to receive £1million less from the RFL and potentially losing a further £1million on ticketing and commercial revenues:

> "In accordance with clause 2.4 of your contract of employment dated 18 June 2017, I hereby give you notice to terminate your contract of employment. This notice shall take effect on 8 January 2018. For the avoidance of any doubt, you will be paid in accordance with your old contract until 30 November 2017 and then receive the final notice payment in accordance with your new contract until 8 January 2018 (i.e. from 1 December 2017 until 8 January 2018)…If you wish to no longer be bound by the contract of employment or if you wish to sign for another Club, then please note that in accordance with the clause, you may, at any time after the notice has been served (9 October 2017) specify in writing to me an earlier date when the termination shall take effect. You will then be able to, for example, travel home whilst having no further obligations to the Club and/or register with another Club but shall not be entitled to any further payment from us after the date that you have specified."

42. Mr Chantler agreed that up to 11 December the employment of Mr Hopkins was continuing.

43. There was a counter notice from Mr Hopkins to end the employment on 11 or 12 December 2017 in an email sent at 10:34 on 12 December saying:

> "The position is that having signed a new contract in the summer, as far as I was concerned it was a done deal and I was tied in to Leigh Centurions for seasons 2018, 2019 and 2020. The Club had no legal right to terminate my contract but having done so and conducted themselves the way they have, it has left me in a perilous dangerous position where my career could come to an abrupt halt especially bearing in mind the injuries sustained whilst on World Cup duty. All of my rights remain expressly reserved for all losses and for the way the Club has conducted itself. Keeping me suspended without a formal disciplinary hearing was childish and completely unnecessary. However, I am duty bound to notify you that I am in the process of completing a move to another club. That should be completed on 12 December and accordingly look forward to receiving my P45 together with the outstanding wages for the 11 days of December."

44. On 11 December 2017 at 17:49 Matthew Chantler had sent an email telling Mr Hopkins that a friendly game that the Club had hoped to secure for 26 December that it was anticipated he would participate in had not been secured:

> "Although you have yet to attend (I will email you regarding this separately), I can confirm that you are no longer required to train. However, should you wish to do so, we will liaise with you regarding arrangements that can be made.
>
> Please note that you are still contracted to the Club and remain obligated to us. I can also confirm that, in light of Christmas, the Club will pay your wages for this month on 21 December 2017."

45. At 20:16 on 11 December there was a further email from Matthew Chantler to Sam Hopkins saying he had now been made aware that Mr Hopkins had missed training sessions without authority on 1, 4, 5, 7 and 8 December, both AM and PM:

> "Could an explanation be provided as a matter of urgency? Please note in accordance with the Code of Conduct a one week fine may be imposed for an absence."

46. Mr Hopkins replied in relation to non-attendance at training on 13 December saying he had previously set out details of the circumstances of his injury and the period it took to obtain a full medical assessment. It was all academic now he had moved to another club but it was impermissible to impose fines without a full and proper disciplinary.

47. In cross examination Mr Chantler said that a fine was imposed. Mr Hopkins was obliged to provide services to the Club which involved training on dates notified to him.

48. He remembered that when he, Mr Chantler started with the Club in 2016 Mr Hopkins was on loan from Wigan.

49. The loan agreement was later provided to the Tribunal, it having been obtained from the RFL. Wigan loaned the player to Leigh from 1 December 2014 to 30 November 2015. The player would continue to be paid by Wigan under his current contract. Leigh would pay Wigan against a monthly invoice. The notes included:

> "At the end of the loan period the player's registration will revert to the loanee club automatically. The player's contract with the loaning club remains in existence insofar as it is not inconsistent with this loan. The loan does not break the player's continuous service with the loaning club,"

50. Mr Chantler was asked about the grounds of resistance and paragraph 6 which suggested that Hopkins did not have a valid unfair dismissal claim because the invocation of an agreed express provision for early termination is a consensual termination and not a dismissal. Mr Chantler confirmed it was his view that it was mutually agreed and was in the contract. He did not see it as dismissal but as an agreed termination. He accepted that there were principles that should have guided the process if it was a dismissal but this was utilising an agreed clause.

51. He met with all the players and affected employees and believed they adopted principles in the ACAS Code in any event.

52. He met with Mr Hopkins on 6 October. He explained that clause 2.4 was an option for either. At that time he did not know who would be affected. He asked Mr Hopkins if he had any thoughts or suggestions. He had no notes of the meeting. There was a note he made to help him prepare for the meeting but he had struggled to find it.

53. He agreed there was nothing in his termination letter about alternatives to termination and there was no right of appeal but Mr Hopkins raised a grievance.

54. Mr Chantler was not involved in the process of selecting who should go but he was the one sending the letters.

55. Cost cutting could in his view amount to "some other substantial reason".

56. There was reference to text messages sent by the claimant to someone with that "someone" subsequently publishing them. It was following this that he wrote to Mr Hopkins to suspend him pending an investigation.

57. Turning to an Agreement made on the standard form on 18 June 2017 between Mr Hopkins and the respondent, he confirmed that the Agreement had been signed by him for and on behalf of the Club and by Mr Hopkins. Employment under the Agreement was to commence on 1 December 2017 with continuous employment from 1 December 2015. The employment would continue until 30 November 2018/19/20 with remuneration provided for from 1/12/17 to 30/11/18, 1/12/18 to 30/11/19 and again from 1/12/18 to 30/11/19 (but perhaps this should have been 1/12/19 to 30/11/20)?

58. According to Mr Chantler, he did not have authority to bind the Club without Derek Beaumont's permission. He agreed Mr Hopkins would not know this and was entitled to assume anything signed by him was binding. He later accepted if he did not believe he had authority to sign then he would not have signed it.

59. The registration forms were not completed. He believed Mr Hopkins had the document for a few days.

60. If he did not think there was a binding contract then his position as Chief Executive Officer was to minimise the risk, and he worked on the basis that there was a contract in place, notwithstanding that the Club believed there was no contract in place. When he was looking at making the final payment he was being risk averse in the interests of the Club.

61. Mr Chantler said that in July 2017 he drafted a contract based on what he believed the position to be during negotiations between Danny Tickle and the Club, but as he did not receive confirmation from either Mr Jukes or Mr Beaumont that the deal and contract had been agreed the Club did not sign or register the contract with the RFL as an agreement was never concluded.

62. On 5 October 2017 he met with Danny Tickle to discuss "relegation and the options available to both parties under the contract. I asked him for his thoughts and discussed his contractual position with him".

63. In cross examination Mr Chantler accepted that he was told of an initial agreement with Mr Tickle then there were revised terms after which he issued an amended contract. He accepted Mr Tickle had signed and returned it. He confirmed the Club did not sign it.

64. When giving notice to Mr Tickle in a letter dated 6 October (substantially in the same form as that given to Mr Hopkins) he was being risk averse. The Club did not believe there was a legally binding contract. There was no mention of the Super League in the contract.

65. He accepted that the RFL's Operational Rules were prescriptive and included provision that:

> "Where a Club's divisional status for the forthcoming season will not have been decided by 31 August the Club may make two offers of re-engagement: one to cover each of the divisions in which the Club may play the following season, and such offers must be made in accordance with the deadlines and means of delivery as detailed above."

66. He confirmed that the Club did not make two offers to anyone because:

> "If you are a Super League Club you don't make offers based on being relegated next season. As long as clause 2.4 is in the contract the Club has the option to utilise it."

67. On 6 October Mr Chantler "met with Lachlan Burr to discuss the contract and the options available under the contract".

68. Although it is not in his witness statement it is apparent that the standard termination letter was sent to Mr Burr on 17 October giving notice to terminate to take effect on 16 January 2018.

69. In cross examination he said that Mr Jukes as Head Coach had no authority to bind the Club. Mr Beaumont did have the authority.

70. Neil Jukes in his evidence in chief said that around June 2017 the staff and players came up with some rules to be implemented in what was called a "Code of Conduct". According to him, all of the players agreed to the Code and signed a copy of the document to acknowledge them. Throughout the season fines and sanctions were imposed under the Code for a number of reasons.

71. In June 2017 he spoke to a number of players about the 2018 season. Lachlan Burr was one of them, but:

> "At no point did I guarantee that he would definitely stay for the 2018 season, which I wouldn't have done in any event as I did not have authority to do so; we certainly did not discuss relegation. It would have been for Derek

Beaumont, Head of Rugby at the time, to have such discussions with players, although really it would have been with their agents."

72. In the Super League the player spend was £1.8million and in the following season the player spend was reduced by £400,000. He went through a number of players that were signed and gave the names of three players who were most applicable as replacements for the claimants, saying that they were at least £25,000 cheaper.

73. In cross examination he said that any communications he may have had with Mr Tickle's agent were authorised by Derek Beaumont. He did not get involved in contractual details. He remembered a positive chat with Danny Tickle about moving forward. His contract was agreed and signed for the year after.

74. He discussed Super League but did not discuss Championship rugby with any player.

75. He did not recall a conversation with Mr Hopkins concerning playing in a lower league. He did advise Sam Hopkins to get an agent; he did not tell Mr Hopkins that if the team were to get relegated in 2017 "the RFL back the contracts" and that the contracts would be honoured, so his contract would still be valid for three years.

76. He agreed that he would have had a conversation with Mr Burr. He would have spoken more to the foreign players. He did not know the individual terms and conditions for the players.

77. He probably would have asked Mr Burr if he was keen to move forward on 30 June 2017, but if he had a fixed term contract why would he ask him? He did not discuss what would have happened had the Club been relegated to the Championship.

78. Following the news that the Club was to be relegated he did call some people to say that their contract was going to be terminated, although he personally did not want to lose any players.

79. After the game which meant relegation he probably said to the players they should go home to be with their families and that the Club would be in touch with them and/or their agents.

80. He was involved in looking at the recruitment of the new squad. Approximately 18 of the old squad left and 18 were recruited. Approximately five players were retained form the old squad.

81. He confirmed that the Code of Conduct came late in the 2017 season and every player signed it. It was laminated. It was his idea to laminate it and put it on the wall.

82. Mr Beaumont told us that the was the sole Director and majority shareholder in the respondent, holding a similar position in another company which was the largest creditor of the respondent. His other company had invested well over £1 million in the respondent.

83. When investing in more players, in particular overseas players who wanted the security of longer contracts to join a club, he did this being informed by Mr Chantler that the standard RFL contracts provided protection following relegation because contracts could be terminated. Most players are represented by professional agents and have the opportunity to raise issues with regard to the contract. From memory only one agent had raised an issue with regard to clause 2.4.

84. Following the relegation and given the financial situation there was no alternative other than to exercise the clause, especially on the most expensive contracts that could be replaced with lower ones. He thought that a couple of players exercised their right to terminate under the contract.

85. A new squad was assembled at significantly lesser cost and the backroom staff were trimmed.

86. In cross examination questions started in respect of Mr Tickle. All of the contracts sent out by Mr Chantler were issued under his direction. A deal was done, and he was happy to keep Mr Tickle for another year. As far as he was concerned Danny was staying with the Club on a new deal. It was the same for Mr Hopkins and Mr Burr. There was never any discussion with any player about the contracts being conditional on staying in the Super League. He would not talk negatively to the players.

87. He was not familiar with the Operational Rules. He had never read them or seen them. The CEO, Mr Chantler, was employed to advise him.

88. The first year of Super League started well. The players wanted to continue to play in Super League and he wanted buy-in from them with contracts for everyone. He wanted them to play in the following year.

89. He visited the players on numerous occasions and before the Million Pound Game he went in and spoke to them. He wanted his players to know that their actions would not have consequences to the staff at the Club. It would not cost any one of the staff their job. He did not tell the players that their jobs were safe. He wanted them to be classy and if they won they should not celebrate but if they lost they should go home to their families.

90. When he negotiated the contract with Mr Tickle he was positive. At that stage there was no question of being relegated.

91. After the Million Pound Game the circumstances were completely different. He accepted that there was a parachute payment of £500,000 agreed on 11 October 2017. Notwithstanding this he knew he could not keep the contracts of the Super League players. They could not be afforded. He wanted to protect the Club so he instructed Matthew Chantler to terminate all the contracts. There was no suggestion made by the Club to the players to have reduced wages. It was an option for the players to offer to play for reduced amounts but no-one did.

92. Players were replaced with new players earning less money.

93. Mr Samuel Hopkins was the first claimant to give evidence. He signed his first professional contract in 2009 for Leigh Centurions. In 2014 he signed a two year deal with Wigan and then was loaned back to Leigh Centurions. After the Wigan contract expired he signed a two year contract at Leigh Centurions for 2016 and 2017.

94. His original contract with Leigh was dated 1 December 2015 then in or around June 2017 he entered into negotiations to sign a three year contract extension, and a fixed term contract with the Club was signed on 18 June 2017 to come into effect on 1 December 2017 covering the 2018, 2019 and 2020 seasons. He had been offered a contract with another club prior to signing with Leigh in June 2017. It was touch and go whether he would sign for Leigh or the other club, but he spoke to Neil Jukes and:

> "I remember the specific wording which Neil said when I asked what the position was in terms of the new contract and if the Centurions were to get relegated in 2017, Neil said 'the RFL back the contracts' and the contracts would be honoured, and so my contract would still be valid for three years, because of this information, and being loyal to the Centurions, I chose to sign the extension."

95. Before signing the contract extension he met with Derek Beaumont where he said he was assured that his contract was to commence on 1 December 2017 and would still be valid despite any relegation:

> "The risk I took, which ultimately didn't pay off, was I was assured that £60,000 was the minimum per season, my thinking was that if I got to the end of the 2017-2018 season and for whatever reason the Centurions were not willing to increase my salary to the £80,000, I was of the belief that I would have had the opportunity to still sign with [the other club]."

96. Turning to the Million Pound Game on 30 September 2017:

> "Prior to the game, I can recall a meeting with Derek, who confirmed that win or lose the game, the employment of the members of staff including the players of the Centurions were safe.
>
> Following the game, on or around 4 October 2017, I had a meeting with Matthew Chantler, CEO of the Club, who explained that the Centurions had lost over £1million worth of sponsors, and £1million worth of funding, therefore pursuant to clause 2.4 he told me that I may be released from my contract. I did receive an email from Matthew on 4 or 5 October 2017 in respect of this.
>
> On 9 October 2017 I then received a letter from the Centurions headed 'Relegation from Super League – Notice to terminate contract'. This letter detailed that in accordance with clause 2.4 of my contract of employment the Centurions give notice to terminate my contract with the notice taking effect on 8 January 2018. This was a major blow and shock given the information previously provided."

97. On 12 October he raised a formal grievance in respect of the decision to terminate, expressing his disappointment in that:

> "I only recently signed a three-year deal with the Club and entered into contract negotiations in good faith with an expectation that my employment would continue. I am advised that my new contract which comes into play on 1 December 2017 remains valid. Please treat this correspondence as a formal grievance in respect of the decision to terminate."

98. He went on to state his understanding that the notice of termination would not be applicable in his case as per schedule 1 of the contract extension which stated that employment under the terms of the Agreement did not commence until 1 December 2017.

99. He was suspended pending disciplinary investigations in relation to social media on 13 October 2017 for an allegation that he had made defamatory remarks against the Club and staff and had brought the Club into disrepute.

100. Shortly after this Mr Hopkins went to Australia with the Welsh national team. He believed that a grievance meeting was arranged but it turned into a disciplinary meeting.

101. Whilst playing for Wales he sustained an injury to his shoulder which required specialist medical attention. He did not go to the training venue in Chorley that the Club had arranged for him and the other players who were on notice. In his view there was no access to a coach or a physiotherapist who could adequately strap his shoulder and supervise his rehabilitation at Chorley.

102. On 11 December Matthew Chantler sent him an email, referred to above, confirming that he was no longer required to train unless he wished to do so and that he was still contracted and obligated to the Club. Wages would be paid in December as usual.

103. There was then the later email on the same day concerning his failure to attend training in Chorley and reference to the Code of Conduct which could involve a one week fine for absence.

104. Mr Hopkins had found a new contract and signed for a new club on 12 December 2017, and he sent the email referred to above to Matthew Chantler to confirm this.

105. In May 2018 he discovered that the contract extension he had signed with the Centurions had not been lodged with the RFL.

106. The Club did not pay his wages in December 2017. Matthew Chantler sent him an email on 27 December 2017 concerning the complaint against him that he had failed to attend training on specified days. Having taken into account the emails sent Mr Chantler confirmed that the Club would have imposed a fine of one week's wage for every training session missed in accordance with the Code of Conduct, but in accordance with Annex 2 of the contract that provides a fine of "up to 50% of your monthly wage, a fine of 50% of your wages has been imposed". As he was only to receive a small payment from the Club it has not made any payment as this would not satisfy the fine imposed. The right of appeal was given which Mr Hopkins exercised in an email on 5 January 2018. He explained that emails inviting him to a

meeting had been in his junk mail and he asked for more time to respond in relation to the fines.

107. In answer to supplementary questions at the start of his evidence Mr Hopkins confirmed that when he was at Wigan and on a season long loan to Leigh the only thing he had from Wigan was contact when they said they would not take up an extension on his contract. There was no other contact.

108. With regard to training in Chorley, he had a significant shoulder injury and there was no-one at Chorley who could strap his shoulder and no-one to do his rehabilitation programme.

109. In 2017 he received the new contract and went in to sign it with Matthew Chantler, who said that he need not worry about the details on the front section of the form. They would fill it in. He signed the contract and initialled each page.

110. In cross examination he said that he never knew clause 2.4 existed until it was used to release him from Leigh. He did not have an agent when he was at Leigh. No payslip was given to him in December 2017 or January 2018.

111. When he signed the new contract with Matthew Chantler there was reference to it shortly afterwards on the Club website – to a three year deal. He had the contract for up to half an hour before he signed it. He was not aware that his contract had not been submitted to the RFL. If he had known about clause 2.4 he would have signed a three-year deal with the other club that was at the time interested in him. He had not thought of checking with the RFL whether his contract had been lodged.

112. Looking at the contract he would describe it as a three year deal but he accepted that it seemed to be one year then they would agree in writing on the next. He was unaware of this at the time.

113. The comment by Mr Jukes about the RFL backing the contract was made by someone that he had known since he was 19 and he regarded him as a close friend as well as a coach. He trusted Mr Jukes. It was his belief that Mr Jukes said what he said to convince him to stay. He had never known Mr Jukes to be dishonest and he trusted him.

114. He was not aware of the relegation clause. It was a three year deal no matter what division the Club was in. The RFL backed the contract. In June there was no thought of relegation. When he met with Mr Beaumont it was in the players' room. Mr Jukes was also there. He was told that if the Club was relegated his contract was sound. After the meeting he went to see Matt Chandler and the contract was given to him to sign and after half an hour he returned with it having signed and initialled every page.

115. After the notice he signed with a new club on 12 December 2017. They had earlier made him a lower offer but when he came back from his Welsh international duty the salary level was increased.

116. When he was contracted to Wigan and played at Leigh for a year he was never called back to Wigan.

117. With regard to the Million Pound Game, Derek told everyone they were safe. He realised after he said it, after losing the game, he decided to change his story. "It was not just me in the meeting that was told, it was the full squad, but he had no take on the meeting and it did not apply to him as he had signed".

118. After the game was lost and he spoke to Mr Chantler he was warned of the possibility that he may be released from his contract. He was confused but could do nothing about it. The Club had lost sponsors and funding. He did not think renegotiation of his contract was an option. Five days later he got the letter of termination. It did not occur to him to seek to renegotiate the contract. His initial offer from the new club was £35,000 which he rejected, and it was later increased to £45,000. Without this, who know what he would have done? He could not say what he would have done at the time.

119. The social media exchanges were with someone he had played rugby with but did not see regularly. He was trusted. This person had never posted anything like it before.

120. With regard to training at Chorley, there was no physiotherapist and no-one to strap his shoulder. He had legal advice that it was not right to go. He told the new club physio that he could not go to Chorley as there was no strapping available.

121. Danny Tickle had a lengthy career in professional rugby dating back to 2000. He joined Leigh Centurions, signing a contract dated 20 July 2016 for the period 21 July 2016 to 30 November 2017. He had an agent. In May 2017 there were negotiations for the signing of a further contract with a fixed term of one year. He signed a fixed term contract on or around 25 July 2017 for the period from 1 December 2017 to 30 November 2018.

122. Following the Million Pound Game on or around 4 or 5 October he received a telephone call from Neil Jukes saying that the contract he had signed for 2018 was void. As far as he was confirmed he was signed to play for 2018. In negotiations there was no mention of the contract being conditional upon Super League status for 2018.

123. He met with Matthew Chantler on 5 October telling him that as far as he was concerned the new contract came into play on 1 December 2017 and therefore was still valid. Matthew Chantler told him that this was not the case, and a letter would follow in relation to his options going forward. He received a letter on 6 October 2017 giving notice to terminate on 5 January 2018 in accordance with clause 2.4.

> "Prior to the game Derek had a meeting with all the players to confirm that win or lose the game, the jobs of the employees of the Club were safe. I and the other players now believe that the words of Derek in the team meeting referred to above were simply nothing more than mere lip service and a tactic to attempt to relieve any pressure off of the players before the game."

124. After receiving this letter he sought legal assistance and raised a formal grievance. He asked the RFL as to whether his new contract had been lodged and it turned out that it had not been lodged.

125. There was a grievance meeting on 24 October 2017 but the grievance was not upheld. There was a grievance appeal thereafter which was also dismissed.

126. He had an email from Matthew Chantler on 6 November 2017 following the grievance meeting on 24 October. In this email Mr Chantler confirmed that notwithstanding that the contract of employment contained the entire agreement between the parties no member of the staff or club official gave Mr Tickle or his agent assurances of the contract remaining valid despite relegation. The contract clearly contained clause 2.4:

> "Your contract of employment contains the standard clause 2.4 and, after taking legal advice and seeking Counsel opinion (which remain privileged), the Club was, and is, satisfied that it has acted lawfully and within its rights by terminating your contract in accordance with clause 2.4."

127. Mr Tickle could not remember signing the Club's Disciplinary Code of Conduct, and he explained that he was absent from December training in Chorley due to a combination of personal issues including family illnesses, hospital visits and the necessity to attend a meeting with his professional team. The Club paid him early in December with a deduction, supposedly as a fine for not attending training, but eventually he received all monies due for December.

128. In cross examination Mr Tickle was not aware as to there being any issue with his contract as to why it would not have been signed properly. There were no ongoing negotiations. It was never questioned that he did not have a contract for the forthcoming season.

129. Mr Beaumont did say all the jobs were safe and not to worry, "If you lose, show respect". It was at a first meeting in a meeting room at the Club when Derek Beaumont came in to say all the jobs were fine and nothing was at risk.

130. Lachlan Burr moved to the UK from Australia in November 2016 to play for a Bradford club, but as that club went into administration he signed for Leigh Centurions where he continued to play rugby until the end of 2017.

131. His contract with the Centurions was dated 19 January 2017 to terminate on 30 November 2019.

132. Before 30 June 2017 Neil Jukes contacted him to ask if he was willing to stay for the 2017-2018 season, and he said that he would continue playing for the Centurions for 2017-2018 on the terms agreed.

133. Prior to the Million Pound Game:

> "I can recall a team meeting with Derek Beaumont who confirmed that win or lose the game, the employment of the members of staff including the players of the Club were safe."

134. He met with Matthew Chantler on 4 October about what the Club was going to do next. He thought Matthew Chantler mentioned clause 2.4 and that the Club was going to be making some changes. Matthew Chantler opened the conversation stating he had been told that Derek Beaumont had asked for him to stay with the

Club but Matthew needed to run through this information. He walked out of the room confident he had nothing to worry about and that the Club would not terminate his contract.

135. After that game Neil Jukes had asked him if he would like to stay with the Club in 2018 and he told Neil he was not going anywhere. His understanding of the three year contract which he signed was that he had all the control as to whether he wanted to stay or return to Australia. All he had to do was notify the Club before 30 June each year, telling them yes or no.

136. There was an email from Matthew Chantler on 5 October 2017 inviting him to a meeting and suggesting there was an understanding from Derek that he may wish to terminate the contract. So far as he was concerned, he never once said he wanted to terminate it, neither did his agent.

137. On 17 October he received his letter of notice under clause 2.4 to expire on 16 January 2018. At no stage did the Club seek to renegotiate pay at a lower level.

138. He was instructed to train at Chorley twice daily at hours that were inconvenient and without access to a coach or a physiotherapist.

139. In December his Australian agent found him an Australian club to play for.

140. He received communications from Matthew Chantler as to the prospect of a fine for missing five training sessions, but he had not attended because he was unwell and had attempted to follow a notification procedure he had followed earlier without issues. The Club did not provide a doctor for him otherwise he would have discussed the issues with the Club doctor.

141. He flew home to Australia on 13 December and on 19 December signed with a new club. There was a deduction from his 2017 wages in respect of a fine for not attending training.

142. In cross examination he said that on 30 June 2017 he made it clear to Mr Jukes he would be sticking with the Club.

143. As to Mr Beaumont saying “all were safe”, the meeting was in the team room mid-week and not in the changing room at the match.

144. After the Million Pound Game he did not have any idea the Club was looking to get rid of him. His money at Leigh was pretty good and he had no reason to go anywhere else. He instructed his agent to seek an increase in his pay with Leigh but they were not interested.

145. He agreed that when he did not go to train at Chorley he did not call the Head of Performance. He tried to call the club doctor but the doctor was no longer available to him. He was sick and this was a reasonable excuse not to attend.

Submissions

146. For the claimants Mr Flynn referred to his skeleton argument submitted at the start of the hearing and amplified various points.

147. As to qualifying service for Mr Hopkins, he claimed continuous employment from 1 December 2015 until 12 December 2017. The claim was in time.

148. The Club understood that the claimant was an employee and terminated his employment in a clear and unambiguous way. If Mr Chantler, Chief Executive, and formerly a practising solicitor had acted with an abundance of caution then this would have been stated in writing.

149. The fact that the claimant would have been selected for a game on 26 December and that he was called for training in December and thereafter fined for not attending training clearly confirmed he was under the control of the Club from 1 December.

150. If the Tribunal does not accept that he was employed until at least 12 December 2017 then the Tribunal should take into account service on loan from 1 December 2014. A person on secondment can obtain employment rights. He was under the control of Leigh not Wigan. It was a contract for which he had to provide personal service.

151. Was this a dismissal or a consensual termination? It was termination by the employer. Look at the reality of the case. 2.4 allows the Club or the player to terminate. One party or the other has to activate the termination provision. This was a decision on the part of the Club and not mutual.

152. As to the reason for the dismissal, the respondent pleads that it was “some other substantial reason”. As to a contractual right, he submits there was no such right. As to cost cutting the figures undermine the cost cutting exercise. There was no question of sitting down with the employee looking at income and expenditure and discussing what was needed.

153. There was a blanket decision to terminate the employment of everyone. It was a fait accompli. This is unfair. There was no agenda, minutes or outcome notes. There was a fundamental requirement to take steps to avoid dismissals. An employer cannot just decide to dismiss and just get rid of 18 people with no attempt to renegotiate a contract. This is an obvious case of a respondent not following a fair procedure.

154. It was both procedurally and substantively unfair.

155. The claimant wanted to stay but had no option other than to mitigate his loss and serve a counter notice when he found alternative employment. There was no contributory fault. The claimant's texts did not bring the Club into disrepute.

156. As to the contracts, the Chief Executive Officer must have authority to bind the Club. Why else would he sign it? The Club served notice under it. It was not lodged with the RFL therefore the Club alleges this was not binding, but there was an obligation on the Club to submit it and to act in good faith. The Club did not act in good faith when it failed to submit the Agreement.

157. Mr Hopkins and Mr Tickle had done all that was required of them by the Club in respect of the new contracts.

158. As to the meaning of clause 2.4, the clause should be considered as a whole applying business common sense.

159. The argument with regard to the applicability or otherwise of the contract is set out in the grounds of claim as follows:

> "The claimant had a contract of employment and as noted above, during June 2017, the claimant was approached by the respondent and offered a new contract. Schedule 1 of the contract states that employment under the terms of the Agreement does not commence until 1 December 2017. It is clear that the reference to 'the current season' in clause 2.4 is a reference to the 2017-2018 season, that being when the employment under the contract commences. In support of this the following should be highlighted:
>
> (a) Schedule 1 states that the employment under the terms of this Agreement commences on 1 December 2017. As at 1 December 2017, the respondent were in the Championship. As the 'current season' refers to the 2017-2018 season as opposed to the 2016-2017 season, clause 2.4 is not engaged.
>
> (b) If the terms of the contract were effective from the date of signing then the contract the players entered into for 2016-17 would have been cancelled and superseded in accordance with clause 2.2. This was clearly not the case.
>
> (c) Clause 1.3 provides that the Agreement is conditional upon the league accepting the registration of the player following completion of the registration form. The respondent did not present the registration form relating to the contract extension evidencing that they did not consider it to be effective until 1 December 2017."

160. Taken from the skeleton argument the Tribunal is reminded that the senior courts have said that the document must be construed as a whole, in its context. It is inappropriate to focus excessively on a particular word, phrase, sentence or clause. The language of the contract should be read in accordance with common sense and not in a pedantic or literal way. Where there are two or more tenable readings of a provision the interpretation most consistent with business common sense will be preferred.

161. On his submission there was no entitlement to terminate.

162. In respect of all three there was an agreement to vary. The contract does not require any variation to be in writing. According to Mr Beaumont the jobs would continue. This was a waiver of the right to terminate. All three witnesses were clear. It was said in the meeting room not on the morning of the game. Although in his evidence Mr Beaumont said he was positive and not wanting to talk about relegation, it is more probable that the claimants' version was accurate. There was no entitlement to terminate. There was an estoppel.

163. With regard to Mr Tickle he signed and returned his contract, it was binding. If he was not bound in December then why send the letter concerning the friendly game? The failure of the Club to file the contract with the RFL indicated the Club not

bringing it into effect until 1 December. The Club did not take advantage of the Operational Rules to make two offers dependent on whether or not the Club remained in the Super League.

164. Mr Burr had discussions with Mr Jukes on his contract and he said he was willing to stay. Why was it necessary to discuss matters unless to confirm there would be continued employment from 1 December 2017? This amounted to a variation to the effect that the contract would continue regardless of the Club being relegated. There is no evidence that Mr Burr was intending to leave.

165. As to unlawful deductions, there was no previous agreement signed by the claimants for the purposes of section 13 of the Employment Rights Act 1996.

166. Clause 22.2 of the contract may allow the imposition of a fine but does not allow a deduction. The Code of Conduct was not signed. It was not put to the players that they had signed it. Even if it had been signed it does not authorise deductions. The deductions were unlawful.

167. Mr Budworth for the respondent supplemented his skeleton argument. He started with Mr Burr saying that he had one breach of contract claim only and given the contents of clause 2.4 it was not clear why he thought he had a breach of contract case. On 30 June he may have said he was willing to stay on the terms agreed under the contract, but there was no agreement that 2.4 would not apply.

168. Each claimant has used identical words stating what Mr Beaumont indicated. At its highest, this was an “off the cuff” comment. It fell far short of an actionable promise that clause 2.4 could be removed from the contract. Any variation of the contract requires fresh consideration. Performance of existing obligations was not fresh consideration. In his submission, no player could argue that there was fresh consideration.

169. For the doctrine of waiver to apply it must be waiver by estoppel, which involves firstly an unequivocal assurance as to the contractual right being waived, and secondly the Club giving an unequivocal assurance that clause 2.4 was not going to apply. This was in Mr Burr’s statement.

170. In respect of Mr Burr the respondent submits that here was a contract which included clause 2.4 which was never removed, and notice was given in accordance with clause 2.4 Mr Burr received that which he was entitled to under the contract.

171. With Mr Tickle it was submitted there was no binding second contract. The copy in the bundle does not appear to be signed by either party. He has not proved anyone at the Club signed it. The RFL said there was no new contract. The tribunal ought not to be able to find a binding second contract. If both parties had signed it would still not be binding because the machinery of the contract leads to that conclusion. There is no safe basis to assume it must be because the Club did not arrange for the registration form to be done. There is no positive case for the club to be blamed for non-completion of the contract. Clause 1.3 of the contract is not just a regulatory point. It is a condition of the contract being registered.

172. If the Tribunal finds there is a binding contract then it is binding from the date of signature. Mr Tickle was employed under the contract dated 20 July 2016 signed

with an accompanying registration document for a term expiring on 30 November 2017. He was given notice on 6 October 2017. The contract dated 25 July 2017 for a term from 1/1217 until 30/11/18 was clearly not signed and was not lodged with the Governing Body and the registration form is blank. The later contract therefore plainly never came into effect.

173. In the submission of Mr Budworth the basis of Mr Tickle's claim that the Club was in breach of contract is very strained. It involves him saying that the July 2017 contract was the one he was employed under. That contract dealt with the 17/18 and 18/19 seasons, therefore the first season of that contract was the 17/18 season when Leigh were already known to be a Championship not a Super League Club, therefore there was no relevant relegation to bring clause 2.4 into effect because the current season was the 17.18 season commencing on 1 December 2017. In his submission it is clear in clause 2.4 that "seasons" is a regulatory definition and does not mean "the playing season for which I am employed under the contract". As at 6 October 2017 when notice was served on Mr Tickle it was confirmed that the Club would start its next season in a lower league competition than the one it started its current season in. Clause 2.4 was faithfully applied whichever contract is in issue.

174. The same would apply to Mr Hopkins.

175. On the deductions, each player was bound to comply with the Club rules and bound to attend all training sessions and obey reasonable instructions. By signing the contract each player gave written consent to a fine as a permissible disciplinary sanction, and so the deductions were authorised by a provision of the worker's contract.

176. The rationale of 2.4 provided that the Club may be on the receiving end of notice from the player who has a clear pre-agreed contractual right also to terminate.

177. Mr Chantler served notice on Mr Tickle. His action cannot give legal effect to something which did not have legal effect. It was a time of crisis. A decision was taken to service notices. Any mistake of Mr Chantler cannot give rise to a contract. Arguably three months' notice was paid to which he was not entitled. There was no valid complaint from Mr Tickle.

178. The second contract for Mr Hopkins was not lodged. If it is not lodged it is of no binding effect.

179. Mr Hopkins could in theory say he got a promise before he signed so he relied on it when he signed the second contract. Rather than signing the other contract there was an offer to him; he must have been given a promise by Leigh that he need not worry about relegation. In his submission the answer relies on what he says Mr Duke said: that the RFL backs the contracts. This does not amount to an unequivocal assurance to waive clause 2.4. These matters are not mentioned int eh ET1.

180. He does not give details of the words used by Mr Beaumont. There is no valid breach of contract claim for him.

181. As to unfair dismissal claimed by Mr Hopkins, the respondent submits there was no dismissal. It was a pre-agreed mechanism and by reference to paragraph 10

of the skeleton (see the case of **Khan v HGS Global**). In this case if there was a dismissal it was a constructive dismissal because the contract ended early when notice was given by the claimant.

182. In his submission the employment ended on 30 November so any treatment from 1 November to 12 December of Mr Tickle does not create an actual or implied employment contract. In his submission the employment ended under section 97(1)(c) of the Employment Rights Act 1996 – the termination of a limited term contract. For the Club to think he was employed thereafter was a mistake. However, if there was qualifying serviced and if there was a dismissal and if it was not constructive then SOSR is a potentially fair reason. The Club utilised and agreed part of the bargain in clause 2.4 which balances the interests of clubs and players. A pre-agreed provision was potentially fair. The Governing Body has confirmed what the clause was there for. The players were told of the dramatic loss in funding. The wage bill came down. Notices were issued before the parachute payment became available. Mr Burr's notice was given after knowledge of the parachute payment but the amount did not solve the problem.

183. There was a meeting. Mr Hopkins and Mr Chantler were in substantial agreement that finances were outlined and Mr Chantler said that clause 2.4 would have to be used. The meeting could and should have been noted. It was not but the player agreed the content of the meeting and that amounted to consultation.

184. There is no evidence that the Club invited Mr Hopkins to consider a lower salary but it was known that Mr Hopkins had a three year fixed deal in his mind and he had rejected an offer of £35,000, wanting to take his chance by playing in the Rugby League World Cup with a view to creating himself as a more valuable proposition. He would have, it was submitted, rejected Leigh. There should be a **Polkey** reduction of 75%-100% if the Tribunal finds in favour of the claimants.

185. In the submission of Mr Budworth the loan agreement with Wigan did not change the identity of the employer which remained Wigan for the term of the loan.

186. In respect of the deductions, there was a laminated version of the Code of Conduct which all had signed. Mr Chantler could not find it but the Tribunal should conclude that all the players did sign it. Fines were properly and reasonably imposed under the rules as amended from time to time.

187. The claimants did not attend a meeting but a fine was permitted and seems to be in accordance with section 13 of the Employment Rights Act 1996.

The Relevant Law

188. Section 13 of the Employment Rights Act 1996 provides:

> (1) An employer shall not make a deduction from wages of a worker employed by him unless –
>
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised –

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

189. Section 15 of the Employment Rights Act 1996 provides:

(1) An employer shall not receive a payment from a worker employed by him unless –

(a) The payment is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract; or

(b) The worker has previously signified in writing his agreement of consent to the making of the payment.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised –

(a) In one or more written terms of the contract or which the employer has given the worker a copy on an occasion prior to the employer receiving the payment in question; or

(b) In one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(4) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(5) Any reference in this Part to an employer receiving a payment from a worker employed by him is a reference to his receiving such a payment in his capacity as the worker's employer.

190. Section 95 Employment Rights Act 1996 provides:

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ..., only if) –

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if –

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

191. Section 98 Employment Rights Act 1996 provides:

(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 –

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a) –

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(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.

Discussion and Conclusions

Samuel Hopkins

Was the claimant dismissed or was there a consensual termination?

192. Clause 2.4 provides that either the Club or the player may terminate the Agreement by providing written notice to the other. In my judgment when the Club gave notice to the player to terminate it amounted to a dismissal and not a consensual termination. The claimant by signing the document agreed to the term of the written contract providing for notice to be given by either party in certain circumstances (even though he may not have been aware of it) but this does not mean that he agreed in advance to notice of termination being given.

193. In this case the player gave a counter notice but section 95(2) of the Employment Rights Act 1996 provides that the reason for the dismissal is to be

taken to be the reason for which the employer's notice is given. I am in no doubt that Mr Hopkins was dismissed in writing by the employer.

If the claimant was dismissed, then what was the reason for the claimant's dismissal?

194. In my judgment the reason for the claimant's dismissal was the Club exercising its rights under clause 2.4 of the claimant's contract of employment following the Million Pound Game the consequence of which was that the Club would be starting the next season in a lower league competition.

195. The reason for dismissal was not a potentially fair reason within the meaning of section 98(2) of the Employment Rights Act 1996.

196. The claimant held the position of a full-time rugby league player under a standard RFL contract which provided for either party to give notice of termination in the event of relegation. In my judgment this clause and the fact of impending relegation together amounted to some other substantial reason of a kind such as to justify the dismissal of an employee holding the position that the claimant held.

Was the dismissal fair within the meaning of section 98(4) of the Employment Rights Act 1996?

197. The circumstances allowing either party to exercise their rights under clause 2.4 had come into effect when the respondent lost the Million Pound Game. The claimant was asked to attend a meeting to discuss the relegation and the options available under the contract. He could bring someone with him. There was a consultation meeting with the claimant when he was told of the likely financial position of the club after relegation and the effect of clause 2.4. It does not appear that the Club asked the player if he wanted to put forward any alternative to termination. The player was however at liberty to put forward anything he wished to say at the meeting including an offer to take a reduced salary. There are no notes of the meeting.

198. The ACAS Code of Practice on Disciplinary and Grievance Procedures does not apply in this case as it was not a disciplinary matter.

199. In the factual circumstances of this case, thinking in particular of the standard RFL contract that anticipated and provided for the termination of the contract by either party on relegation, I find that the process followed was just sufficient to make the dismissal of Mr Hopkins under clause 2.4 fair.

Did the claimant's contract signed on 18 June 2017 take legal effect?

What were the terms of it and the state of the Operational Rules?

Was the Club legally entitled to terminate the contract on 8 January 2018?

If the respondent was legally entitled to terminate the contract on 8 January 2018, did it do so in accordance with the terms of the contract?

200. Before considering these issues I have looked at Mr Hopkins's Grounds of Complaint and the List of Issues. There is no question of waiver or estoppel in either document so I do not consider it to be a part of his case.

201. The claimant signed the contract on 18 June 2017 in good faith and with the intention of it continuing for another year. The Club did not follow the procedure it should have done to register the contract with the RFL. This was a matter over which the claimant had no influence or knowledge. He had the right to assume that the Club had done that which it was supposed to do under the Operational Rules.

202. Looking at clause 1.3 of the Agreement it is conditional upon the League accepting the registration of the Player and the Player agrees that if the League does not accept his registration "then the Club may terminate the Agreement immediately without notice…". In my judgment this means that where a player has signed the Agreement it is valid between him and the Club until the League does not accept his registration and the Club terminates without notice. In this case there was no question of the registration being rejected because the Club did not submit the Agreement to the RFL. In my judgment the contract took legal effect from 18 June 2017.

203. There is a dispute as to the definition of "current season". Mr Flynn submits that I should adopt a broad test leading to a conclusion that yields to business common sense. In my judgment the "current season" must be given the meaning put forward by Karen Moorhouse. This gives a sensible purpose to the provision in the contract that comes into effect immediately following the Club discovering it will be moving to a lower division. This allows the Club to reduce its obligations to "expensive" players and allows the Super League players to look for alternative employment in the Super League without either side having to wait one full year before being able to do so. Any other conclusion does not seem to me to be commercially sensible in the interests of either the Club or the players.

204. On the basis that the Agreement was in my judgment a valid contract of employment, to commence on 1 December when the current contract ended, the Club was legally entitled to terminate the claimant's contract by giving contractual notice to expire on 8 January 2018 because the circumstances anticipated by clause 2.4 obtained.

205. If I am wrong and the contract did not take legal effect for any reason then in my judgment the respondent gave the claimant a reasonable period of notice to terminate his employment when it gave him three months' written notice.

Was there any unlawful deduction?

Did the claimant sign a Code of Conduct authorising the imposition of fines?

Are any terms of the Code of Conduct signed legally enforceable?

Did the respondent comply with the terms when making any deduction?

206. In my judgment the evidence does not show on the balance of probabilities that the claimant had signed the Code of Conduct and thus had not authorised the making of deductions from his wages in the circumstances described.

207. Clause 3.4 of the Agreement refers to the player authorising the deduction of fines properly and reasonably imposed by the Club. Given the claimant's reasons for not attending training and the lack of a disciplinary hearing at which the issue could be given full consideration before the fine was levied I do not find that the fines were properly and reasonably imposed by the Club.

208. In the light of my conclusions that the claimant had not consented to the deduction being made and that the fine was not properly and reasonably imposed I find that the claimant's complaint is well-founded and that the respondent shall pay to the claimant the amount of the deduction.

209. As there was no December pay calculation I cannot award a specific figure and so I invite the parties to agree upon the amount due to Mr Hopkins and to pay it to him.

Danny Tickle

210. Mr Tickle does not plead waiver or estoppel and it is not in the List of Issues relating to him.

211. For the reasons given above in respect of Mr Hopkins's wrongful dismissal/breach of contract claim, I find that the Mr Tickle's contract signed on or around 25 July 2017 did take legal effect and that the Club was entitled to give notice to terminate it, expiring on 5 January 2018. In the alternative, reasonable notice was given under the contract.

Lachlan Burr

212. In paragraph 20 of Mr Burr's Grounds of Complaint he pleads that before approximately 30 June 2017 the respondent's head coach had contacted the claimant and asked if he was willing to stay for the 2017-18 season and the claimant confirmed that he was. "The parties were affirming that the claimant would continue in the employment of the respondent for the season 2017-18 on the terms agreed."

213. The respondent pleads that "to the extent that paragraph 20 means to argue that the contract was varied, that is fanciful because: the claimant makes no case on a certain and complete agreement having been made which was supported by consideration and intended to create legal relations. Any agreement hinted at does not contend that it was not without prejudice to the club's standing rights under clause 2.4. In so far as paragraph 20 means to argue that there was a binding contractual waiver of clause 2.4 that is also fanciful because no case is disclosed on there being an unequivocal communication of a course of action which was inconsistent with a subsequent reliance on clause 2.4; no case is disclosed on any alleged unequivocal promise on which the claimant relied to his detriment such that it would be inequitable for the Club to resile from."

214. Mr Jukes accepts that he spoke to Mr Burr in June 2017, well before the Million Pound Game, and asked him if he was happy at the club and if he was interested in staying on for the next season. Mr Burr says that Neil Jukes contacted him and asked if he was willing to stay at the Centurions for the 2017-18 season and he unequivocally confirmed that he was.

215. In my judgment this was a simple question as to the player's intentions and a simple response. There was no discussion whatsoever about contractual terms. I do not find that there was any agreement that any contractual terms should be varied or waived in respect of Mr Burr.

216. I find that his wrongful dismissal/breach of contract claim fails for the same reason as Mr Tickle's claim fails.

217. I find that Mr Burr's unlawful deduction claim succeeds for the same reasons that Mr Hopkins' claim succeeds. The parties should seek to agree the amount of the unlawful deduction and to make payment of the agreed sum to Mr Burr.

Remedy

218. If these two represented claimants and the represented respondent are not able to reach an agreement on the amounts payable in respect of the unlawful deductions then they should apply for a remedy hearing to be listed.

Employment Judge Sherratt

9 December 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
19 December 2019

FOR THE TRIBUNAL OFFICE

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