Appeal No. UKEAT/0086/18/BA

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 25 October 2019

Before

THE HONOURABLE MR JUSTICE GRIFFITHS

(SITTING ALONE)

HUMAN KIND CHARITY — APPELLANT

MS J GITTENS — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR MARK GREEN (of Counsel) Instructed by: Ellis Whittam Limited Woodhouse Church Lane Aldford Chester Cheshire CH3 6JD
For the Respondent	MR MATTHEW JACKSON (of Counsel) Free Representation Unit

SUMMARY

CONTRACT OF EMPLOYMENT – Wrongful dismissal

PRACTICE AND PROCEDURE – Disposal of appeal including remission

The Employment Tribunal misdirected itself in law by applying **Ranson v Customer Systems plc** [2012] EWCA 841 to a case in which the employee did not remain silent but submitted an Investigation Report which was "not true" and in which "there was clearly some element of dishonesty" (quoting ET Reasons). The right to remain silent (where it exists) is not the same as a right to say something that is not true. Finding of wrongful dismissal set aside. **Bell v Lever Bros Ltd** [1932] AC 161 HL and **Item Software (UK) Ltd v Fassihi** [2005] ICR 450 CA considered.

THE HONOURABLE MR JUSTICE GRIFFITHS

1. This is an appeal from a Judgment ("Judgment") given with Reasons ("Reasons") dated 1 November 2017 following a hearing before an Employment Tribunal ("ET") consisting of the Employment Judge and two lay members on 16, 17 and 18 October 2017.

2. The Judgment dismissed the Claimant's claims of unfair dismissal and direct discrimination, and there are no appeals against those decisions. The Judgment, however, upheld a claim for "damages for breach of contract in relation to three months' notice pay", i.e. a claim for wrongful dismissal. The Respondent appeals that decision.

The parties

3. The Appellant employer was the Respondent before the Employment Tribunal and I will refer it as "the Respondent". The Respondent to the appeal was the Claimant at the ET and I will refer to her as "the Claimant".

4. The Respondent was originally named as Blenheim CDP, a charity working with drug and alcohol users. The Claimant was employed by them as an Area Manager. She was summarily dismissed by letter dated 20 May 2016 and an internal appeal was unsuccessful. At the hearing before me, both parties asked me to substitute Human Kind Charity for Blenheim CDP as the name of the Appellant, since Human Kind Charity has now taken over the work and liabilities of Blenheim CDP, and I agreed to do that.

Grounds of appeal

5. The appeal was formulated in the Notice of Appeal under two heads, as follows: -

i). "First, the Tribunal applied the wrong legal test with regard to a case of dishonesty, by misapplying the case of **Ranson v Customer Systems Plc** [2012] EWCA Civ 841. The Tribunal wrongly held that **Ranson** was authority for the proposition that the Claimant was not under a duty to report her own wrongdoing and being asked to investigate the iPad charges."

ii). "Secondly, the Tribunal wrongly focused solely on whether there was an express term within the Claimant's contract requiring her to disclose any wrongdoing. It therefore failed to take into account whether there was an implied term in the Claimant's contract that she undertake her duties (and in particular any investigations she was asked to undertake) honestly."

Facts

6. The Judgment and the Reasons found the following facts which are relevant to the issue of wrongful dismissal.

7. The Claimant joined the Respondent in 2006 as a Project Manager and, after a two-year break, returned in 2012 as an Area Manager. She had responsibility for a team of approximately 30 people and for a budget of £1 million. However, the Reasons concluded (and there is no appeal in this respect) that she was not a member of the senior management team, and not comparable to a director (Reasons paragraph 43). Therefore, she was not a fiduciary, and the cases which explore the disclosure duties of directors, and others owing fiduciary duties, are not directly on point in this appeal. She was an employee: nothing more and nothing less.

8. The Claimant's team was based at the Grove Centre and had the use of an iPad, which the Reasons call "the Grove iPad". Initially, there were no data charges for the Grove iPad. But there came a time when data did start to incur charges. In May 2016, a bill of £8,523 was paid by the Respondent in respect of the Grove iPad (Reasons paragraph 5). In November 2015, Ms Sharon Daughter (the Claimant's line manager) "queried this very high charge as part of a budget discussion" (Reasons paragraph 5).

9. By email dated 5 November 2015, Ms Daughter "asked the Claimant to carry out an investigation into what had happened" (Reasons paragraph 6). On 6 November, Ms Daughter sent the Claimant an investigation template in an email saying "Please investigate as fully as possible". (Reasons paragraph 6).

10. On 9 November 2015 the Claimant emailed a letter of resignation, and in the body of the email said:

> **"Thank you for the information but unfortunately I am unable to carry out the investigation as I am responsible for the iPad being allowed to be used. I can only say I'm very sorry that such a bill was incurred but I did not know that the contract was pay as you go otherwise I would never have allowed it to be used."**

11. On the face of it, this might appear to be an admission of what later turned out to be the case (see Reasons paragraph 11 second sentence), which was that the data charges were incurred when the iPad was in the Claimant's possession. However, that is not what she meant and not what the Respondent understood, as explained in paragraph 8 of the Reasons:

> **"8. The Claimant met with Ms Daughter. She explains in her witness statement that she took responsibility for what had happened as the Area Manager for Grove as "it happened on my watch". Ms Daughter said that she did not view the Claimant's actions as suspicious in any way. She did not see any reason to ask someone else to carry out the investigation and took the view that the Claimant was simply accepting responsibility as the manager of the team. She persuaded the Claimant to withdraw her resignation."**

12. On 24 November 2015 Ms Daughter and the Claimant discussed the investigation (which had not been started) and agreed that it would be completed within 10 working days from 30 November. The matter was discussed again on 5 January 2016 and Ms Daughter asked the Claimant to write up her investigation and deliver it (Reasons paragraph 9).

13. The Claimant emailed her investigation report to Ms Daughter on 27 January 2016 (although it was dated 29 December). It contained the following sentence (Reasons paragraph 10): -

> **"I cannot narrow the bill charges down to any one person and do not think that it is fair that someone should carry the weight of this mistake as no-one had intentionally acted in a way that could be deemed inappropriate."**

14. The Tribunal found as a fact that this statement (that she could not pin down use of the Grove iPad to anyone in particular) "was not true" (Reasons paragraph 26).

15. Before me the Claimant's counsel argued that, because the Investigation Report was sent on 27 January 2016, and the Reasons elsewhere say that the Claimant "realised in December or January that the iPad had been in possession when the charges were incurred" (Reasons paragraph 25), it was possible that the Claimant did not realise that the statement was untrue when she made it, because there are 4 days in January after 27 January 2016, and one of those might have been the day on which the realisation came to the Claimant. I disagree. That is a strange and impossible reading of the Reasons. Whenever it was "in December or January" that the Claimant realised that the charges were incurred when the iPad was in her possession, it was clearly before she sent out the Investigation Report on 27 January, and that is why the Tribunal says that what she says "was not true" (in paragraph 26) and that "there was clearly some dishonesty in the… report" (Reasons paragraph 45). That finding of dishonesty lies at the heart of this case, and of this appeal.

16. Ms Daughter did not consider the Claimant's Investigation Report to be adequate and, on 29 January 2016, she commissioned someone else "to carry out a separate investigation into what had happened with the iPad" (Reasons paragraph 11). The Claimant then told Ms Daughter at a supervision meeting "that she had been in possession of the iPad when the charges had been incurred" (Reasons paragraph 11).

17. The Claimant was subsequently put through what the Judgment found was a fair disciplinary process, based on two allegations. The first was that the Claimant had incurred over £8,000 of data charges without permission; and the second, most importantly for the wrongful dismissal case, was that "you intentionally submitted a false investigation report in relation to the above data charges" (Reasons paragraph 13).

18. After the disciplinary hearing (Reasons paragraph 17):

> **"A letter was issued on 20 May 2016 confirming that the Claimant would be summarily dismissed for gross misconduct on grounds of dishonesty and the resulting breach of trust and confidence in relation to her role as a senior manager.**

The decision of the Employment Tribunal

19. Unlike me, the Tribunal had to decide issues in addition to the wrongful dismissal claim. It had to decide whether the dismissal was fair, applying the **British Homes Stores v Burchell** [1980] ICR 303 test, which is based (in part) upon the employer's subjective honest belief in the guilt or innocence of the employee, rather than upon an objective finding about it. It had to decide allegations of race discrimination. The consideration of the facts was, therefore, being conducted in number of different contexts, most of which have now fallen away. The Tribunal also confessed, "We find that this matter is not clear cut at all and we have had immense difficulties in reaching our conclusions" (Reasons paragraph 19). The Tribunal was unable to reach a decision on the unfair dismissal and race discrimination claims on which all the members were

agreed, those claims being dismissed by a majority, although the wrongful dismissal claim was upheld unanimously. However, a single set of Reasons was (as usual) produced, which had to accommodate the differences between the Tribunal members. The Reasons are not as clear as they might have been if they had been exclusively focused on the questions now remaining in the appeal, or if they had expressed a single view on all the matters in question. This difficult exercise was, nevertheless conscientiously performed, and I think that the case is clear enough.

20. In relation to the wrongful dismissal claim, the Tribunal's unanimous decision was expressed as follows: (Reasons 41 to 45):

> **"41. The claimant was summarily dismissed and brings a claim of wrongful dismissal, or breach of contract in relation to the failure to pay her notice pay. Here we have to apply a different test to that which we apply in the case of unfair dismissal, where the guiding case is the *Burchell* case. In relation to the wrongful dismissal claim, it is necessary for the Tribunal to decide whether the Claimant was responsible for a repudiatory breach of her contract of employment.**
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> **42. First, we have noted that there is no express term in the claimant's contract requiring her to disclose any wrong doing. We have taken account of the case of *Ranson v Customer Systems plc* [2012] EWCA 841 which suggests that an employee does not have the same fiduciary duty as a director, and (in the absence of an express contractual term) does not have a general duty to disclose her own wrongdoing. We think this is a significant factor in the circumstances of this case, where the Claimant was effectively asked to investigate her own conduct.**
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> **43. We have considered Mr Green's argument, first of all that there was a duty to disclose because the Claimant had a very senior position akin to that of a director and therefore a duty of candour might have been expected. We don't accept that argument. She was clearly not a member of the senior management team and we do not consider her to be comparable to a director. Second, we have considered Mr Green's contention that if an employer asks a direct question then an employee must answer it honestly. He suggests that because the Claimant was asked to carry out an investigation the duty to disclose arose, and the Claimant should have approached her employer and told them exactly what had happened.**
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> **44. We do not find the request to carry out an investigation to be quite comparable with being asked a direct question. In fact we find that the Claimant was never asked a direct question about whether she had the iPad at the time in question, and whether she was responsible for the charges. It was the Claimant herself who disclosed her role in incurring the iPad charges to the Respondent in February 2016, having first sought to avoid the task of carrying out the investigation in November 2015.**
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> **45. We therefore find that even though there was clearly some dishonesty in the eventual report that was submitted by her, this needs to be considered in light of the principle that the Claimant was not under a duty to investigate and report her own wrongdoing, in accordance with the *Ranson* case. Ultimately it was the claimant who came forward to accept personal responsibility for what had happened. Our conclusion is that the claimants conduct did not amount to a fundamental breach of her contract of employment and therefore she was entitled to her notice pay."**

21. The references to the facts in this passage are commentary on the findings of primary fact which were made were earlier in the Reasons, and which I have summarised above. In particular, the statements that, "It was the Claimant herself who disclosed her role in incurring the iPad charges to the Respondent in February 2016" and "Ultimately it was the claimant who came forward to accept personal responsibility for what happened" (Reasons paragraphs 44 and 45) are references to the primary facts that, as the Tribunal found earlier (Reasons paragraphs 6 – 11): (1) the Claimant was given the job of writing an investigation report, which she eventually accepted; (2) the Claimant in her report said "I cannot narrow the bill charges down to any one person"; (3) this "was not true"; (4) the Claimant told the truth after the Respondent had decided her report was inadequate and commissioned someone else to investigate.

Discussion and decision

22. Paragraph 41 of the Reasons correctly identifies the difference between the unfair dismissal test in misconduct cases, based on **Burchell**, which is subjective, and the wrongful dismissal test, which is objective: "In relation to the wrongful dismissal claim, it is necessary for the Tribunal to decide whether the Claimant was responsible for a repudiatory breach of her contract of employment."

23. Paragraph 42 of the Reasons, however, then raises the principles in **Ranson v Customer Systems** as a "significant factor in the circumstances of this case", particularly noting the absence of an express term in the Claimant's contract "requiring her to disclose any wrongdoing." This seems to me to have been something of a red herring. **Ranson,** and many earlier cases, consider the question of whether or not an employee (in some cases) or a fiduciary has a duty of disclosure - that is, a duty to not to remain silent about some misconduct or other - and, if so, the extent of such a duty and the circumstances in which it arises, or does not arise. In the present case,

however, the Claimant had written an investigation report in which she said something that was "not true" and in respect of which the Tribunal found "there was clearly some dishonesty". In my judgment, there is an important distinction between silence and a positive statement which is untrue, and, moreover, dishonestly (rather than inadvertently or negligently) untrue.

24. In **Item Software (UK) Ltd v Fassihi & Ors** [2005] ICR 450, the Court of Appeal considered the decision of the House of Lords in **Bell v Lever Brothers Ltd** [1932] AC 161. **Item** was a case about a director, who was therefore a fiduciary, but Arden LJ (with whom Holman and Mummery LJJ agreed) examined passages in the judgments of Lord Atkin and Lord Thankerton in **Bell** (with both of whom Lord Blanesburgh agreed) which considered the position of mere employees. Arden LJ cited these passages in relation to what she called "the superadded duty of disclosure" (paragraph 51, picking up a phrase of Lord Atkin), which I have already distinguished from cases of positive misstatement. However, one passage in the judgment of Lord Atkin, and a comment by Arden LJ on that passage, both refer briefly to misstatement cases.

25. Lord Atkin said (**Bell** [1932] AC 161 at 228 and 229, quoted at greater length by Arden LJ in **Item** at paragraph 50):

> **"The servant owes a duty not to steal, but having stolen is there superadded a duty to confess that he has stolen? I am satisfied that to imply such a duty would be a departure from the well-established usage of mankind and would be to create obligations entirely outside the normal contemplation of the parties concerned. If a man agrees to raise his butler's wages, must the butler disclose that two years ago he received a secret commission from the wine merchant; and if the master discovers it, can he without dismissal or after the servant has left avoid the agreement for the increase in salary and recover back the extra wages paid? If he gives his cook a month's wages in lieu of notice can he on discovering that the cook has been pilfering the tea and sugar claim the return of the month's wages? 1 think not. He takes the risk; if he wishes to protect himself he can question his servant, and will then be protected by the truth or otherwise of the answers."**

26. For present purposes, this last sentence is the most relevant: stating that, in an ordinary non-fiduciary relationship of employer and employee, if the employer wishes to protect himself, "he can question his servant, and will then be protected by the truth or otherwise of the answers."

I understand this to mean that Lord Atkin thought that, if an employee gave an untruthful answer to a question, the employer would have a claim, and this he distinguished from the question of whether an employee has a right to remain altogether silent.

27. Commenting on this passage, Arden LJ in **Item Software(UK) Ltd v Fassihi** [2005] ICR 450 said (at paragraph 51): -

> **"…. An employer does not expect to be able to recover the wages that an employee who has committed a breach of duty which he has failed to disclose unless (possibly) he has made enquiries of the employee and the employee has given him false information."**

Here again, Arden LJ has drawn a distinction between silence on the part of the employee, and false information given after enquiries. That such a distinction is important seems to me to be common sense.

28. That is not to say that an employee is always bound to answer questions from the employer, even if they will incriminate him. That is a point which often arises, when employees under suspicion are called in for questioning while still employed. I will not express any view about whether, or when, the employee is, in that situation, bound to answer, or whether, or when, he may decline to answer. That was not the position in this case. The Claimant did not remain silent. The Claimant did try initially not to accept the commission to produce an Investigation Report (and she tried to resign, instead), but she was persuaded to take it on, and she did take it on, and she did report, and in her report she said something that was not true. She was dismissed, not for remaining silent, but because (quoting the disciplinary allegation), "you intentionally submitted a false investigation report in relation to the above data charges" (Reasons paragraphs 13). The dismissal letter confirmed the dismissal which followed was "for gross misconduct on grounds of dishonesty…." (Reasons paragraph 17).

29. The Reasons say (at paragraph 42) that "the Claimant was effectively asked to investigate her own conduct" but, on the Tribunal's findings, the Respondent did not know that the conduct in question was the Claimant's when it asked her to investigate it. The Claimant knew, at any rate by the time she submitted the report on 27 January, that she was the person responsible, but she nevertheless said that (as the Tribunal expressed it, in Reasons paragraph 26) "she could not pin down use of the iPad to anyone in particular", which was, as the Tribunal found, "not true".

30. At paragraphs 43 to 44 of the Reasons, the Tribunal considered her submission "that if an employer asks a direct question then an employee must answer it honestly", and that "because the Claimant was asked to carry out an investigation the duty to disclose arose" but observed: "We did not find the request to carry out an investigation to be quite comparable to being asked a direct question." Clearly being asked a direct question, and being asked (as in this case) to "investigate as fully as possible", and then producing an Investigation Report which is "not true", are not quite the same. However, does the difference in the two situations make the difference between whether there was a breach of duty or not, or whether any such breach was repudiatory or not? I do not see how it can. The Tribunal's own reasoning for deciding that there was no repudiatory breach in this case is contained in the next paragraph (Reasons paragraph 45), which I have quoted in paragraph 20 above. They say:

> **"We therefore find that even though there was clearly some dishonesty in the eventual report that was submitted by her, this needs to be considered in light of the principle that the Claimant was not under a duty to investigate and report her own wrongdoing, in accordance with the *Ranson* case."**

31. **Ranson** was a case of silence on the part of the employee, not of false information. I therefore consider that the Reasons erred in law when they pointed to **Ranson** as relevant to the question of whether the submission of an Investigation Report which was "not true", and in which "there was clearly some element of dishonesty", was a repudiatory breach of contract on the Claimant's part.

32. Resisting the appeal, Counsel for the Claimant argued that the contract term on which the alleged repudiation was based had not been sufficiently established and that it is too late for the Respondent, at the appeal stage, to formulate such a term, in the absence of any relevant express term in the contract of employment.

33. The Grounds of Resistance in the ET3 said (paragraph 32) that "the Claimant's conduct had caused a serious breakdown in trust and confidence." The Respondent's closing submissions to the Employment Tribunal said (paragraph 18): "Once she had been found to be dishonest or disingenuous, trust and confidence was lost in her. It is entirely reasonable in those circumstance to dismiss for gross misconduct - dishonesty went to the core of her contract of employment." This was also the language of the dismissal letter (as paraphrased in Reasons paragraph 17) relying on:

> **"…gross misconduct on grounds of dishonesty and the resulting breach of trust and confidence in relation to her role as a senior manager."**

34. This is the language of a term implied into all contracts of employment as confirmed by the House in Lords in **Malik and Mahmud v Bank of Credit and Commerce International** [1997] ICR 606, [1998] AC 20 (which Counsel for the Claimant accepted applies both to employer and employee), namely, not, without reasonable and proper cause, to conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Breach of this term has been said always to be repudiatory: **Morrow v Safeway Stores Plc** [2002] IRLR 9. This is the basis on which the Claimant was dismissed, and it is securely founded on the well-established term of mutual trust and confidence, which is a contract term.

35. In my judgement, the Reasons erred in law when relying on **Ranson v Customer Systems**, and on the absence of a duty on the Claimant as an employee to disclose her own wrongdoing, to support a finding that she was not in repudiatory breach of contract on the facts found by the Tribunal. **Ranson** was a case about an employee who said nothing at all; not an employee who said something that was not true. Unlike Mr Ranson, the Claimant did not remain silent but submitted, in the discharge of an instruction to conduct a full investigation, an Investigation Report which said that she could not pin down use of the Grove iPad to anyone in particular, which was "not true", and in which the Tribunal decided there was "clearly some dishonesty" on her part.

36. The Reasons also erred in law in saying that what they described as dishonesty "needs to be considered in light of the principle that the Claimant was not under a duty to investigate the report of her own wrongdoing, in accordance with the **Ranson** case". **Ranson** was not authority for any principle applicable to an employee who makes a positive misstatement to an employer about conduct under investigation; nor was it applicable to an employee who had been positively tasked with an investigation which she eventually agreed to carry out, and did carry out. This is not a case about a "superadded duty of disclosure", that is, a duty to volunteer information about the employee's own conduct when no enquiry has been made. Nor is it a case about a contractual duty to disclose. It is a case in which a dishonest response was given to an enquiry, and an Investigation Report was submitted which was not true.

37. The implication in the Reasons, that the person given the task of investigation need not produce an investigation report which is true, if an untruth or a lack of honesty are required to cover up the investigator's own conduct, because of a right of silence, or a right not to incriminate oneself, is not supported by the authorities referred to and has no basis in principle or in law.

38. The right to remain silent (where it exists) is not the same as a right to say something that is not true. In confusing those questions, the Reasons erred in law.

Disposal

39. That then leads to the question of how the error should be remedied. The dismissal letter shows that the Respondent took a strong view of the Claimant's conduct and the Tribunal, albeit by majority, found that a conclusion of dishonesty was open to them in the light of the contents of the Claimant's Investigation Report (Reasons paragraph 29). The question of whether there has been a repudiatory breach of contract - that is, the question of wrongful as opposed to unfair dismissal - is an objective one, and that goes as much for a case based on a breach of the implied term of trust and confidence as any other case: **Bournemouth University v Buckland** [2010] ICR 908. It was a question, therefore for the Employment Tribunal itself to decide.

40. Now that I have decided that the Employment Tribunal erred in the law, the principles established by the Court of Appeal in **Jafri v Lincoln College** [2014] ICR 920 apply to the question of whether the wrongful dismissal question should be remitted to the Employment Tribunal (whether the same one, or one differently constituted). As summarised in the head note at 920 to 921: -

> **"….if the appeal tribunal detected a legal error by an employment tribunal, it had to remit the matter, unless either it concluded that the error could not have affected the result and was therefore immaterial, or, though the result would have been different without the error, the appeal tribunal was able to conclude what the result would have been, in either case the result had to flow from findings made by the Employment Tribunal, supplemented (if at all) only by undisputed or indisputable facts; that the appeal tribunal was not to make any factual assessment for itself, or any judgment of its own as to the merits; that in any case where, once the employment tribunal's error of law was corrected, more than one outcome was possible, it had to be left to the tribunal to decide what the outcome should be, however well placed the appeal tribunal might be to take the decision itself….**
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> **Per *Underhill LJ and Sir Timothy Lloyd.* The Employment Appeal Tribunal should always consider carefully whether the case is indeed one where more than one answer is reasonably possible."**

41. In my judgement, only one outcome was possible on the wrongful dismissal question, flowing from the Employment Tribunal's findings of fact. I do not overlook the points in the Claimant's favour that were made in the Reasons. These included the Claimant's admission of responsibility, although this came only when her investigation had failed to satisfy the employer and another investigator had been appointed. Before that, she had delivered a report which was no true, and she did so dishonestly, thereby covering up her own responsibility for the very subject matter of the report she had agreed to write. This is clear from the Reasons themselves; in which the phrase "not true" and the finding that "there was clearly some dishonesty" in the Claimant's report have already been quoted. The Tribunal also thought it "important to point out that whilst the Claimant agreed that she had the iPad she doesn't take responsibility for the level of charges incurred and indeed can't understand why they were so high." (Reasons paragraph 15). That does not, however, justify dishonesty or submitting a Report that was not true. It was something that she might have put in the Report by way of mitigation, but she did not do that.

42. *Harvey on Industrial Relations and Employment Law* says, "The employee must behave honestly. Dishonesty usually justifies summary dismissal at common law…" (AII[161]). In its section on "Summary dismissal", *Chitty on Contracts* says: "An employee may obviously be dismissed for dishonesty or fraud in his employment", citing **Brown v Croft** [1828] 6 Car. & P. 16n.; **Cunningham v Fonblanque** [1833] 6 Car. & P. 44, 49; and **Phillips v Foxhall** [1872] LR 7 QB 666.

43. I am confident that no Employment Tribunal, properly directing itself, would fail to conclude that the Claimant had committed a repudiatory breach of contract, on the facts of this case, as found by the Employment Tribunal. It would therefore be wrong to remit the matter. I

A allow the appeal. The award of notice pay, which was made by the Employment Tribunal by way of damages for wrongful dismissal, will be set aside.

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