



EMPLOYMENT TRIBUNALS

Claimant: Mr S Duffy

Respondent: Sky UK Limited

Heard at: London South Croydon **On:** 9-18 November 2020
and the 19 November and 10-11 December 2020 (in chambers)

Before: Employment Judge Sage

Members: Ms L Grayson
Ms C Edwards

Representation

Claimant: Mr J Duffy (Father of the Claimant)

Respondent: Mr Ryan of Counsel

JUDGMENT

1. The Claimant's claim for unfair dismissal is well founded.
2. The Claimant's claim for unfair dismissal contrary to section 103A is not well founded and is dismissed
3. The Claimant's claim for discrimination contrary to the Fixed term Employees Regulations is not well founded and is dismissed.

REASONS

1. By a claim form presented on the 24 October 2018 the Claimant claimed discrimination on the grounds of fixed term status and unfair dismissal. After a preliminary hearing on the 7 February 2020 an amendment was allowed for the Claimant to pursue a claim for automatic unfair dismissal on the grounds of making a protected disclosure. It was held at the preliminary hearing that the Claimant was continuously employed for a period of 2 years from the 22 January 2016 to the 30 July 2018.
2. The Respondent defended the claims.

The List of issues.

**Unfair Constructive Dismissal under the Employment Rights Act 1996
(ERA 1996)**

1. Was there a repudiatory breach of contract on the part of the R? C asserts that R breached the implied term of trust and confidence (see below)

2. C relies on the following allegations/events which caused him to resign on 19 July 2018:

(a) Between November 2017 and 24 March 2018, the C was subject to inappropriate comments as alleged in his ET1 claim

(b) Between 30 May and 7 June 2018, the C was undermined by Mr Warwick as alleged in his ET1 claim

(c) On 7 June 2018, the C was informed that he has been unsuccessful at interview (and was not slotted into a role);

(d) On 25 October 2018, the C was informed of the outcome of his grievance

3. Did the above events take place as alleged and - taken individually or cumulatively - were they intended to or likely to destroy trust and confidence (and were they done without proper and reasonable cause).

4. If there was a breach, was such breach fundamental?

5. Did C waive the breach and/or affirm his contract of employment

6. If not, did C resign in response to the breach or for some other reason?

7. If C was constructively dismissed, was there a potentially fair reason for the conduct of R that led to his constructive dismissal? If so, was that conduct reasonable or unreasonable.

Whistleblowing claim / Automatic unfair constructive dismissal

8. What was the protected disclosure made by the C? (in brief terms)?

9. When and to whom and in what form was the protected disclosure?

10. If a qualifying disclosure was made, was it made in the public interest?

11. If C was constructively dismissed and made a protected disclosure, was the reason (or, if more than one, the principle reason), for R's conduct leading to resignation that C made a protected disclosure?

Fixed Term Regulations claim

12. Is C's comparator a comparable permanent employee, engaged in the same or broadly similar work? (C relies upon MK, FO, CH and JT)

13. Was the C treated less favourably by R in comparison to permanent employees in the following respects:

a) Been subject to interview on 1 June 2018 in order to be offered a new role (rather than been slotted in)? (Note: the C relies upon the background

facts from circa February 2018 / prior to February 2018? - time limitation/pleadings issue?)

14. More generally and to determine the above the Tribunal is invited to ask itself:

- a) Did a permanent role (or available vacancy) actually exist, at the material time, as a matter of fact?
- b) Was the R obliged to give a fair opportunity to the C to secure a permanent role?
- c) If so, did the R provide the C with a fair opportunity by interviewing the C or should the C have been slotted in?

15. To the extent that the R treated the C less favourably than a permanent employee, was that treatment justified on objective grounds?

Remedy

16. What is the Claimant entitled to, given the findings of fact and the law? In particular:

- a) Did C contribute to his (constructive) dismissal or would the dismissal have taken place in any event on or around the same date, or was it likely that C's employment would have ended for a fair reason in the period after the termination of employment. If so, what is C's actual loss arising because of the breach and/or should there be a reduction to compensation on a just and equitable basis (and/or, if applicable, to the basic award)
- b) To what extent has the Claimant mitigated his losses by way of his new earnings?
- c) If it is found that the Claimant was treated less favourably, what compensation is due (if any) under Regulations 7(7) to 7(12)?
- d) In relation to C's grievance:
 - i. Did the ACAS procedures apply? [the C to clarify the alleged breach, with reference to the ACAS rules]
 - ii. Did the R unreasonably fail to comply with those ACAS procedures?
 - iii. If so is it just and equitable to increase any award? By what proportion, up to 25%?

Witnesses

The Claimant

For the Respondent we heard from:

Mr Ramsey Director of Studios

Ms MacMillan People Policy manager

Mr Wood Support and Development manager

Mr Warwick Floor Manager

Ms Unsworth Floor Manager

Mr Downey Director of Post-Production and Partnerships

Findings of Fact

The findings of facts which are agreed or on the balance of probabilities we find to be as follows:

3. The Claimant worked for the Respondent on a previous fixed term contract from 22 January 2015 (due to start work on the 2 February 2015) until termination on the 20 November 2015. The Claimant was employed as a Booking Coordinator and during the period of the 12 October to 24 November 2015, the Claimant was also allowed to shadow Mr Lacey who was working as a Floor Manager at Sky News, this was described as an informal placement. During this placement the Claimant was subjected to what he described as 'serious intimidation' and on the witness stand he said he was excessively criticised in a non-constructive manner. He suggested in his statement at paragraphs 24-26 that he was undermined by Mr Lacey who sent derogatory emails about him to Mr Spiers, the Line manager. The Claimant throughout his training period felt that Mr Lacey had used derogatory language to describe him and had voiced the opinion that he should not be employed.
4. The Claimant also referred in his statement to witnessing serious sexual harassment including sexually degrading remarks and thrusting motions by Mr Lacey towards female presenters and guests including Ms Burley and Dane Helen Mirren. He found this inappropriate and offensive (paragraph 24 of his statement). The Claimant escalated his grievance on both the sexual harassment and bullying by Mr Lacey on the 9 December 2015, after his contract had terminated "the Lacey grievance".

The Claimant's employment at Sky Sports News

5. The Claimant was then employed on a Temporary staff contract commencing on the 22 January 2016 which was due to expire on the 12 February 2017 as a Floor Assistant. The role was in Sky Sports News 'SSN' which was a separate department to Sky News where he was employed previously. The Claimant was then given a fixed term contract commencing January 2017 until termination on the 30 July 2018, again working as a Floor Assistant. The Claimant's line manager was Mr Stan Kingsbury from January 2016 to November 2017. One of the Floor Managers working on SSN was Mr Warwick who had worked for the Respondent for some time (around 10 years at the relevant time). Mr Warwick confirmed that the permanent staff and fixed term employees worked together in the same team. In his statement at paragraph 12 he stated that permanent staff are 'formally appraised' but fixed term staff have discussions about performance together with the needs of the business around any contract extension.
6. The Claimant received an outcome following the investigation into the Lacey grievance on the 3 February 2016 and it was partly upheld and the Claimant received a payment for the shifts that he had covered as part of his shadowing. The sexual harassment element of his grievance was not upheld. The Claimant lodged an appeal and the outcome was delivered on 13 May 2016 (page 896); as part of the outcome Mr Lacey agreed to provide a written apology to the Claimant which was seen in the bundle at page 910.
7. Although the Claimant in his statement at paragraph 37 said that he tried to avoid Mr Lacey when he returned to work at SSN he saw him from a distance and the last time he saw him was in April/May 2018. He also learned after he left SSN (paragraph 41-2) that Mr Lacey had told his

former colleagues at Sky News that he had made untrue malicious and false allegations against him. There was no evidence before the Tribunal to suggest that Mr Lacey had made those allegations to Mr Wood, Ms Unsworth or Mr Warwick.

8. There was no evidence to suggest that the Claimant had experienced any problems with his performance or with his relationship with others when he was managed by Mr Kingsbury.
9. On the 7 May 2017 the Claimant alleged that Mr Warwick was 'blunt and angry with him'. The background to this incident was that the Claimant was working a long day arriving at the studio at 4.30pm; he was told that Mr Warwick needed to leave early and he said that he would try and relieve him by 6.30pm. It was common in the Respondent company for staff to 'do deals'; this is where a person comes in early on their shift to let the person at the end of their shift to leave early. The Claimant explained that as this was a Saturday, he was working on Soccer Saturday and the programme went straight into 'Goals Express' which is recorded in a different studio on a different floor. This potentially created difficulties which the Claimant had to be on hand in order to deal with problems (as Floor Assistant). The Claimant made efforts to relieve Mr Warwick and went back to the studio at 6.45 where he found Mr Warwick 'angry and sulking' while he was packing his bag and said that there was 'no point going home'. The Claimant was upset by this and he suggested that Mr Warwick's hostility and subsequent vendetta stemmed from this incident. The Tribunal noted that this was the Claimant's view of why Mr Warwick formed a negative opinion of him and where the team player criticism came from. There was no evidence that Mr Warwick was aware at the time of the Lacey grievance.

Mr Warwick becoming the Claimant's line manager.

10. The Claimant's contract was extended on the 27 November 2017 until the 31 July 2018 (page 95) in the role of Assistant Floor Manager. Although the Claimant's manager up to November was Mr Kingsbury, who he got on well with, Mr Warwick took over as Team Leader in November 2017. It was Mr Warwick's evidence that he dealt with the Claimant's contract renewal and gave evidence about this in his statement at paragraphs 153-154. He confirmed that although fixed term staff do not have appraisals, at the contract renewal date performance issues and business requirements are discussed. Even though there was a dispute about how the meeting was conducted, there was broad agreement that there was a discussion about whether the Claimant was viewed as a Team Player and Mr Warwick had picked this up from other Floor Assistants (paragraph 154). The Tribunal noted that this appeared to be a reference to what the Claimant described above that occurred on the 7 May 2017; reference to 'doing deals' identified by the staff working at the Respondent to be evidence of Team work.
11. Although Mr Warwick said in his statement that the Claimant burst into tears at hearing this, the Claimant denied this. The Tribunal noted that in his interview with Mr Steer in connection with the investigation of the Claimant's grievance, Mr Warwick confirmed this was discussed and only commented that the Claimant was quite upset and didn't respond well; he

did not say that the Claimant burst into tears (page 465). Mr Warwick's evidence to the Tribunal was therefore inconsistent with his evidence to the grievance investigation.

12. The Claimant accepted that Mr Warwick was the manager who approved his contract extension and that the time to raise concerns about performance generally was at this meeting. Although Mr Warwick told the Tribunal at the time of the contract extension he had heard "not so positive reports about the Claimant" he produced no evidence about this and could not say where he heard these rumours, however he clarified that they were not huge issues. There was no evidence to suggest that the negative reports he had heard about the Claimant was related to the Lacey grievance. We conclude that his negative view of the Claimant was formed when the Claimant failed to let him leave early on the 7 May 2017.

NFL event

13. Mr Warwick maintained that he helped the Claimant's career development by arranging for him to trail him on the NFL Thanksgiving show on the 23 November. Mr Warwick's recollection was in paragraph 138 where he stated that the Claimant appeared nervous and commented that he didn't think that he could do this. Mr Warwick stated at paragraph 139 that he created this opportunity and it was ludicrous for the Claimant to suggest otherwise.
14. The Claimant's recollection of his involvement on this production was very different. He stated that he was working all night on the NFL show as Assistant Floor Manager, he had been requested by the Bookings Coordinator to cover this as they were short staffed. He confirmed that he was not shadowing as alleged by Mr Warwick, he was assisting someone called Adrian Hillard. The Tribunal have to find as a fact whose evidence is preferred in respect of this incident. We conclude on the balance of probabilities that we prefer the evidence of the Claimant because overall his evidence was consistent. We accept the Claimant's evidence that he was working and Mr Warwick's involvement was limited to authorising his attendance.

ATG Tickets

15. The Tribunal heard that Mr Warwick had suggested that he was not bullying the Claimant and provided evidence to support this by referring to giving him tickets for the tennis on the 14 November 2017. It was put to the Claimant in cross examination that this was not the action of a bully. The Claimant referred the Tribunal to the competition for the tickets, which was sent out to 300 employees and the tickets would be awarded on a first come, first served basis. The Claimant won the competition (page 683D). Mr Ramsey acknowledged that the Claimant was the winner and he picked up the tickets from the box office. It was noted by the Tribunal that Mr Warwick had told Mr Steer (page 471) as part of the investigation of the Claimant's grievance that he had given the Claimant the tickets "to help him feel part of the team". Mr Warwick accepted in his statement that this was not true. Mr Warwick also said in his statement at paragraph 171 that he invited the Claimant up to the studio on the day he

attended this event, but this was denied by the Claimant. The Tribunal on the balance of probabilities find that the Claimant's version of this event was true, that he had won the tickets in a competition. Mr Warwick's evidence was inconsistent with the contemporaneous evidence and was not evidence to support his contention that he had not bullied the Claimant. This and the NFL incident did not show that Mr Warwick had supported or assisted the Claimant in his role and it did not suggest that he had attempted to improve or enhance the Claimant's career progression.

16. The Claimant referred in his further particulars on page 140 to an incident on the 10 December 2017 where a freelance worker had been cancelled by mistake. The mistake was made by the Booking Coordinator not the Claimant. The Claimant was informed by his colleague Mr King that Mr Warwick was furious and had told all the staff present that he was in trouble and was going to be investigated. Mr Warwick later found out that this was not due to any act or default of the Claimant, but he did not apologise to him. Mr Warwick had no recollection of this incident. This was again an incident that was recalled by the Claimant and corroborated by others, but one which Mr Warwick had no recollection of.

The leaving gift for Mr Kingsbury

17. On the 4 January 2018 the Claimant took a leaving gift into the office for Mr Kingsbury who had moved to another department. He stated in his chronology at page 22-3 of the bundle that Ms Unsworth the Floor Manager said to him he should be buying a present for his new manager Mr Warwick. Mr Hall, who the Claimant maintained was a friend of Mr Warwick's also said "*haven't you got a contract renewal coming soon? Shouldn't you be giving this to Richard (Warwick)?*" The Claimant told the Tribunal that he was shocked by this exchange and in cross examination did not accept that this was a light-hearted exchange and he felt that they made 'a big deal out of it'.

The Restructure.

18. The Tribunal saw Mr Ramsey's business case for a restructure in the bundle at pages 99-101. In outline the proposal was to combine three disciplines into one role so all would train up to perform the roles of Floor Assistant, Camera and Lighting in a new Multi Skilled Operator 'MSO' role. The Claimant accepted that he was aware of the restructure in the summer of 2017 when Mr Kingsbury discussed this with him (paragraph 62 of his statement).
19. The Tribunal were taken to page 136 of the bundle which showed the proposed changes to the MSO role as a result of the restructure. This document referred to 9 people who were affected by the changes, six of those were permanent employees and three were fixed term employees. The proposal showed a total of 15 roles being created.
20. Although Mr Ramsey had told the Tribunal that the restructure was broken down into three distinct stages, phase one of which was limited to those at risk and involved 5 roles, it was the evidence of Ms Unsworth that phase 1 did not start until the 1 May when the training started. Mr

Wood's evidence (who was responsible for rolling out the structure on the ground) said that phase 1 started on the 1 May and ended around October/November 2018. Mr Wood also confirmed that phase 2 of the restructure did not go ahead. There was no evidence that there were 'three distinct phases' of the restructure, the consistent evidence before the Tribunal showed that the first phase involved the implementation of 15 new MSO roles. The permanent staff were assimilated into the new roles without interview and were trained after they have been placed in the new positions. The fixed term employees had to apply for the roles by attending an interview and after selection they would be trained in the role.

21. There was a general announcement made about the restructure which was seen at pages 104-5 which was provided to all staff. The announcement confirmed that they would be combining three disciplines into one role and to 'create 15 new roles'. It was described as an exciting opportunity to learn and develop new skills. There was a separate announcement headed 'Fixed Term and Secondees' which was exactly the same as the one which (presumably) was focussed on permanent staff and it confirmed that it was introduced in a meeting after one held with permanent staff. It was confirmed that fixed term contracts would continue until the end date and they could apply for permanent roles via the website, when they became available. There was one secondee, Lenata King who was a permanent employee who was also expected to go through an interview process for the new MSO role. We noted that Ms King was a permanent employee who was on secondment who subsequently was absent on maternity leave, her situation did not seem to be comparable to that of the fixed term employees.
22. The Tribunal saw an exchange of emails between Ms Macmillan of HR and Mr Ramsey from the 31 January to the 1 February 2018 (pages 159-164). HR provided advice to Mr Ramsey on the approach to follow and produced the consultation documentation referred to above. A list of employees presently serving in the department was produced (page 159) showing the five permanent staff who were identified as being 'at risk'. Of those permanent employees Mr Heath and Mr King had previously been freelance but had their contracts converted to permanent. Mr King was made permanent on the 28 November 2017, it was confirmed by the Claimant that he was a lighting operative. Mr Heath, also lighting was converted to a permanent contract on the 13 June 2017. The Claimant told the Tribunal that he had longer service than Mr King and Mr Heath (who he stated had only one years' service) see paragraph 64(i) of his statement, whereas the Claimant had 2 years' service at the date of the restructure.
23. Ms Macmillan confirmed that when she populated the table on page 159 of the staff involved, she failed to establish the dates of their contracts or length of service. However, we compared this evidence to her email response given to Mr Steer who was investigating the Claimant's grievance dated the 20 July 2018 at page 406 of the bundle. She confirmed in this email that they divided the staff into two groups, permanent employees and those on fixed term contracts. The fixed term employees would continue with the Respondent until the end of their contracts and "once we had worked through consultation with the

permanent employees, we would advise of any outstanding roles which they could apply for". She said in this email that the permanent employees who were identified to be at risk had a 4-week trial period however that was not what happened due to the need to provide training in the new MSO role. She confirmed that the "minimum criteria" did not apply to fixed term staff as they were employed for a fixed period and as the new role was multi-disciplinary (as opposed to the single skill role they held at the time), an interview process would be put in place. The Tribunal noted however that all staff were single skilled at the time the new role was introduced and all staff, whether fixed term or permanent, had to undergo training.

24. At the end of her email she stated that she had checked the records and reviewed all the start dates and "none of the Fixed Term contractors had been employed for 2 years or over at the point of the announcement". Ms Macmillan's evidence in chief about this email was that she was "*not entirely sure what I fully knew and appreciated at the time as to why things were happening*" (paragraph 36) and she stated that at the time she wrote this email she was not aware of the "*phased implementation or how many roles were created*". She also stated (paragraph 38 of her statement) that she did not give "*much thought to this email*" and that she did not look at the length of service of fixed term staff at the time of supporting Mr Ramsay in January/February 2018 saying she would never look at the length of service of those 'not at risk'. She also added in her statement that even if a fixed term employee had been employed for 2 years (as had been subsequently found by the Tribunal) it would not have changed her approach.
25. Ms Macmillan was asked in cross examination why the fixed term staff were treated differently to the permanent staff and the answer she gave was that they could not take three people out at the same point in time for training. She was asked by the Tribunal whether she agreed that all staff both fixed and permanent staff were at risk with the introduction of the new MSO role and she disagreed that the Fixed term employees were at risk as they would be employed until their end date.
26. The Tribunal find as a fact that Ms Macmillan's evidence as to what she considered at the time was contradictory and inconsistent and we conclude that her evidence was unreliable. We also conclude that the fixed term staff had been treated differently to the permanent staff solely on the grounds of their fixed term status. We conclude that length of service was a factor that Ms Macmillan considered at the time as we conclude that her email written at the time was more likely to be an accurate representation of the facts before her than her subsequent evidence given in Tribunal which contradicted contemporaneous documents. Those facts would have corroborated that the Claimant had greater length of service than other permanent staff (Mr King and Mr Heath) and at the relevant time the Claimant had accrued two years continuous service.
27. Mr Wood the Support and Development Manager and the person in charge of implementation of the restructure, was taken to page 159 of the bundle in cross examination; he confirmed that the same nine people

referred to above on page 136 were identified to be in phase 1 of the restructure, but the Claimant was in the second phase of recruitment in phase 1. Mr Wood confirmed that phase 2 of the restructure, in relation to the autocue staff did not happen. Mr Wood clarified in cross examination that they were unable to recruit and train all the people in one go. The training on all phases took from May until October or November 2019. Mr Wood confirmed to the Tribunal that the training on both phases lasted well over a 12 month period.

28. In re-examination Mr Wood confirmed that the restructure concept was proved in November 2018 when they had staff trained across all disciplines and they had three different training plans. He confirmed that training the permanent staff did not prove the concept, it needed more to feel comfortable. Mr Wood told the Tribunal that two members of the permanent staff, Mr King and Mr Heath completed their training quite quickly which gave more flexibility to train up others. He confirmed that they had proved the concept i.e. that this new MSO role worked and they continued training the other permanent staff.
29. Mr Wood denied in re-examination that the phases were concocted and explained that they had a plan to create 15 new roles and there was no agreement for the trainees to run SSN with the amount of downtime that was required to carry out the training. He explained that the problem was not having 'sign up' to create training time and having people on what he described as sitting on the 'subs bench'. Therefore, the training had to be staggered to ensure that adequate resources were available to provide the training for those in each phase.

The group meeting on the 7th February.

30. The Claimant attended a group meeting on the 7th February where the outline of the restructure was explained by Mr Ramsey. There was a dispute as to what happened at the meeting and unfortunately there were no minutes of what was discussed before the Tribunal. There was no evidence to suggest that the details of the restructure were provided to the Claimant in this meeting, and particularly there was no evidence that the Claimant was told that the restructure was to take place in three distinct phases.
31. The only documentary evidence that we saw of the meeting was at page 184 of the bundle, which was a letter to the Claimant **to confirm the outcome of the meeting**. This was confirmation of the restructure, which would replace all three studio disciplines into one SMO role. It also confirmed that his fixed term contract would end on 31 July 2018.
32. It was Mr Ramsay's evidence to the Tribunal was that "100 million%" the Claimant knew that there would not be 15 roles available immediately. Mr Ramsay told the Tribunal in cross examination that his focus in the meetings was to ensure that everyone knew what was happening and there would be 4 to 5 people at risk of redundancy and they were the people employed on permanent contracts. It was his view that the fixed term people were not at risk of redundancy.

33. The Tribunal noted that the original ET3 seen on page 42 of the bundle (the original defence) confirmed that the number of new roles to be created in the restructure was 15, and no mention was made to different phases. We note that in the amended grounds of resistance at page 51 at paragraph 10 that the number of roles affected in the reorganisation was removed and that there was stated to be a degree of flexibility in relation to the recruitment process and the timescales associated with the proposed restructure on when the roles would actually be created. The Tribunal note that in Ms Unsworth's statement at paragraph 31 she confirmed that everyone knew that the plan was to create 15 roles, but it was not an overnight change. She confirmed that the first phase did not start until 1 May when the five permanent staff started in their new roles. It was also noted in paragraph 35 of her statement that she referred to the creation of 15 new roles by mid-February 2018. The Tribunal therefore find as a fact that the restructure created 15 roles in the department but the appointment into the roles and the training was carried out in phases over a period of time.

Individual Consultation Meeting with the Claimant.

34. The Claimant met with Mr Ramsey and Mr Warwick on the **9 February** 2018 as part of the individual consultation process introducing the proposed new structure. The Claimant felt that Mr Warwick and Ramsey had shared what he described as a 'lads' joke' about him being nervous. Mr Warwick denied he started the meeting by asking if the Claimant was nervous, but he confirmed in cross examination that he felt he was. The Claimant also denied that Mr Warwick referred to the employee, Antonia to motivate him and he disputed that he was supportive of him in this meeting. It was the Claimant's evidence in cross examination that he helped train Antonia and helped her secure a role. The Claimant told the Tribunal that he always got nervous in interviews, but Mr Warwick made this worse. He said he was comfortable with the idea of working across all three disciplines.

35. After the meeting, the Claimant spoke with Ms Unsworth and told her that Mr Warwick had been 'intimidating' him and undermining him to Mr Ramsey. She was supportive and he trusted her. Ms Unsworth confirmed in her evidence in chief that this meeting occurred and that he was upset about the way he had been treated by Mr Warwick but she did not feel that he was being intimidated or singled out by him (see paragraph 42 of her statement).

The Claimant's interactions with Mr Warwick.

36. The Claimant's father was taken ill and was sent to hospital on the 11 February 2018. The Claimant visited him in hospital but was delayed getting in to work and he was late for his 'report time'. Mr Warwick texted the Claimant and asked him if he was around, we saw this at page 188-9. The Claimant explained the reason he was running late, and he arrived at work shortly after sending the text. In Mr Warwick's reply he asked him to do the weekly report which he agreed to do. The Claimant told the Tribunal that Mr Warwick was always 'cold' and did not say that he was sorry to hear that his dad was ill. The Claimant was upset by this and because he perceived that Mr Warwick was being cold towards him.

37. The Claimant left work after that shift taking the guest card home by mistake, which Mr Warwick described as an essential bit of kit. The Claimant accepted that he should not have taken this home but another one could be obtained from a person called Dawn. Mr Warwick was unaware of this and asked the Claimant to bring it back that day. The Claimant was asked in cross examination why he failed to inform Mr Warwick that a replacement card could be obtained from someone in the office, but the Claimant said that he was very tired and was not thinking straight. Although these incidents may have been distressing for the Claimant at the time, due to his concern for his father's health, the request made by Mr Warwick appeared to be reasonable.

5 March 2018 – 'it pays to be honest' comment made by Mr Warwick

38. The next incident relied upon by the Claimant was on the 5 March 2018 (page 24) where he was asked by Femi Oridata (permanent) to tell Mr Warwick, if he asked, that he was running late because his car had broken down. Mr Warwick asked the Claimant where Femi was (about an hour later) and he relayed the message and he alleged that Mr Warwick said to him "*it pays to be honest Sean, try it sometime*". At page 457 the Tribunal saw the eyewitness account of this incident given by Ms Luu-Moynihan to the grievance investigation. She confirmed that she heard words to the effect that "*honesty gets you a long way*" and that it was not said in a friendly manner. She said it was quite passive aggressive. In the same interview she described the Claimant as being "awesome" and confirmed that he had helped her and had written up notes to help her in the role. She described him as a "really good guy".

39. Mr Warwick in his statement accepted that he made a comment to the Claimant and it was sarcastic, and he stated it was something along the lines of doing deals. The Claimant accepted in cross examination that Mr Warwick made reference to 'doing deals' but after he denied he had done a deal, he then made the comment about being honest. The Tribunal find as a fact that this was not a light-hearted comment, it was witnessed by another who confirmed it was said in a passive aggressive manner and it called into question the Claimant's honesty. It was also taken into account by the Tribunal that it was said by the person who had line management responsibility for the Claimant and it was said in front of other staff. It was also corroborated by Mr Wood in cross examination that Mr Warwick could not be described as a 'jovial person' which the Tribunal conclude corroborated the evidence of the eye-witness who felt that the words were said in a passive aggressive or hostile manner. Being said in front of others made the comment more serious.

40. There was an incident on the 24 March 2018 where the Claimant was feeling unwell at work. He text Mr Warwick, who was in the building, saying he was struggling but could see the day out but would need cover for the following day (page 200). Although Mr Warwick confirmed that cover was arranged for him for the following day, the Claimant was distressed that he did not come down at any time to check how he was feeling and showed no empathy. The Claimant was able to complete his shift that day but was off sick the following day.

41. From the 1 May 2018 the permanent staff commenced their training for the new MSO role. This was dealt with in Mr Wood's statement at paragraphs 44-52. Mr Wood told the Tribunal that he was responsible for the implementation of the restructure, this was delegated to him by Mr Ramsey. The training for the permanent staff was signed off in November.
42. The Claimant was invited to an update meeting on the 18 May 2018 with Ms Unsworth and Mr Wood. During this meeting they discussed the interview for the new role. It was described as an opportunity for the Claimant to ask them any questions and they gave some details of the interview process.

The Wembley incident

43. The Claimant approached a senior person at sky football, Lawrence Cawsey, to attend unpaid and on his day off to observe floor management techniques on an outside broadcast, which was different to the role undertaken by a studio Floor Manager (or Floor Assistant). He was advised to contact Mr Hughes, Head of Sky Football, which he did on 5 March 2018, which was seen at page 199 of the bundle. Mr Hughes arranged two opportunities for the Claimant, and he didn't ask him if he had his manager's approval. The second observation or trail event for the Claimant was when he attended on 28 May, which was a League 2 final Coventry v Exeter on May Bank Holiday. This was a Premiership match and he was trailing Mr Howard, who was freelance.
44. Mr Howard was the match/tunnel Floor Manager and Mr Warwick was there in charge of the presentation team, the studio element of the work. It was accepted by Ms Unsworth that Mr Howard was "quite high up – Football Match Manager is a complicated job" and accepted that he was well respected as he was covering a premiership game. Mr Warwick's personal opinion of Mr Howard did not accord with that of Ms Unsworth, he felt that Mr Howard covered "lower league games" and was quite disparaging of his skills and reputation saying that he had only recently covered a bit of the premier league. He also felt that Mr Howard viewed him as competition and therefore had a motive not to tell the truth in a later investigation into the Claimant's grievance (paragraphs 118-128).
45. The Claimant ran into Mr Warwick at the gatehouse. The Claimant said Mr Warwick asked him what he was doing there, and he stormed off before the Claimant had time to answer him. The Claimant denied he said he was covering for a runner, as alleged by Mr Warwick, as he had been invited to trail Mr Howard. The Claimant suggested that there was no point in lying, as he would have been caught out.
46. Mr Warwick stated at paragraph 50 of his statement that he met Mr Howard soon after he ran into the Claimant; he alleged that Mr Howard said to him. "Nice guy-will never make a Floor Manager". Mr Warwick believed that Mr Howard was annoyed about having the Claimant trailing him on the second occasion as he had only received confirmation by text that morning. Mr Warwick alleged that he was apologising to Mr Howard for what had happened as he had no knowledge of the arrangement. Mr Warwick denied that he commented about the Claimant's ability in this

conversation in any way. Mr Warwick indicated that he was annoyed because he thought the Claimant's attendance without his knowledge and approval could potentially have had a negative impact on the work that he had been doing over a period of five years to cover these major events. In answer to the Tribunal's questions he confirmed that he made reference to the Claimant's abilities but not to his skills.

47. The Tribunal saw the interview with Mr Howard conducted by Mr Steer as part of the investigation into the Claimant's grievance, this interview took place on 19 July 2018 and the minutes were at page 398 of the bundle. Mr Howard's evidence was that Mr Warwick approached him and informed him of his negative views of the Claimant in respect of his day-to-day job and any potential future job. Mr Howard said he did not like what Mr Warwick was saying to him as it was negative. In his view, Mr Howard believed the Claimant had gone through the proper channels to secure the training opportunity. He also said he did not believe the Claimant could do anything to jeopardise the broadcast as he was only there to watch.
48. Mr Howard confirmed that he told the Claimant what Mr Warwick had said to him and after that the Claimant went into what he described as a bit of a shell. The following day the Claimant sent Mr Howard a text which corroborated Mr Howard's evidence because he said: "*thank you for not taking notice of Richard; he has it in for me.*" (page 228(i)). He went on to state in this text that he had to reinterview for his job on Friday and expected Mr Warwick to hurt his chances. The Tribunal find as a fact and on the balance of probabilities that the evidence of the Claimant is preferred to that of Mr Warwick. There was consistent evidence to suggest that Mr Warwick was annoyed on seeing the Claimant.
49. Mr Howard's evidence was put to Mr Warwick in cross examination and he was of the view that he was lying because Mr Howard saw him as a threat and he described his comments as "two faced". Mr Warwick went further to suggest that Mr Howard told lies in his interview to discredit him. Mr Warwick accepted however that when he was taken to page 228B which was the text the Claimant sent to his mother on the day of the trial, was consistent with Mr Howard's version of the events (as it stated "Richard was there and was told by Mick (the Floor Manager) he was "throwing me under the bus" saying I am not good enough etc"). Although these emails corroborated Mr Howard's version of the events, Mr Warwick still maintained that Mr Howard was lying. The Tribunal did not find it credible that a well-respected freelance worker would lie about this incident and we conclude that the Claimant's version of events was corroborated by the text messages and by Mr Howard. To suggest that Mr Howard was lying because he was jealous of Mr Warwick was unsupported by any evidence and was not credible.
50. The Tribunal were taken by the Claimant to page 293 of the bundle which was an email he sent to Mr Warwick on the 30 May 2018. He stated "I have been told by numerous people that you have been making unjustified disparaging remarks about me". The Claimant asked Mr Warwick to stop and offered to meet up with him to clear the air. The Claimant told the Tribunal that the intention behind the email was to warn

Mr Warwick off and at the same time to offer an olive branch. Mr Warwick told the tribunal that he did not receive this email.

51. There was also corroborative evidence to suggest that Mr Warwick had shared his negative opinions about the Claimant's skills and professional qualities saying on two separate occasions that the Claimant was 'nervous' and not a team player.

Mr Warwick's approach to Mr Wood and Ms Unsworth

52. Mr Wood accepted that some time before the Claimant's interview on 1st June for the MSO role, he was approached by Mr Warwick in the office asking for advice. Mr Wood was Mr Warwick's line manager. He couldn't remember exactly when this was but thought it was around the time of the 29th - 31st May. Mr Wood was taken to the minutes of his interview with Mr Downey at page 542 which took place on 17th January 2019 where he confirmed that Mr Warwick spoke to him the day before the interview. Although Mr Wood wasn't clear which day he confirmed it must have been the Tuesday or the Thursday.
53. Mr Wood didn't feel that the concern raised by Mr Warwick about the Wembley matter was a big issue. He stated that Mr Warwick felt the Claimant had not gone through the proper channels and he wanted to know '*how to prevent it happening again*'. His advice to Mr Warwick was to have a chat with the Claimant and advise Ms Unsworth as she was taking over as Team Leader. Mr Wood didn't view this as a serious matter and certainly not something that would sabotage the interview and he viewed it as a positive thing as it showed the Claimant was using his initiative. Mr Wood was asked in cross examination about the evidence that Mr Warwick gave to Mr Steer on page 468 where he stated that Mr Wood told him that "*if nothing else there is a courtesy issue*" and he agreed that these words were used and said that it was a "courtesy and a communications issue". Mr Wood denied that he said that the Claimant lacked courtesy. There was no suggestion that the Claimant would face any disciplinary process as a result of what happened at Wembley and no evidence that he breached any rules.
54. Mr Warwick couldn't recollect precisely when his discussion with Mr Wood took place but he confirmed that he approached Mr Wood for advice on how to deal with the attendance of the Claimant at the Wembley match. It was Mr Warwick's evidence that he told Mr Wood that the Claimant did not go through protocol in his eyes. He also shared the alleged comments made by Mr Howard. He confirmed that Mr Wood told him to have a chat with the Claimant about it. Mr Warwick's evidence was that Mr Wood thought the Claimant should have informed him of the trail out of courtesy. He denied that Mr Wood said that the Claimant lacked courtesy. There was a dispute as to who introduced the word courtesy into the conversation.
55. Mr Warwick then met Ms. Unsworth and he thought it was on the same day as his meeting with Mr Wood. Ms. Unsworth couldn't remember when she met with Mr Warwick and as we found as a fact that the

meeting with Mr Wood was on Thursday 31st May we conclude on the balance of probabilities that this conversation took place with Ms. Unsworth later the same day, even though this was denied by her. Ms. Unsworth stated that what took place was not a meeting but an unofficial brief conversation in a corridor. Ms. Unsworth described Mr Warwick as being terribly upset in her statement at paragraph 61, however in her interview with Mr Downey she described him as being annoyed; this was also a view shared by Mr Warwick himself. In her interview with Mr Steer at page 434 of the bundle she provided an opinion that the Claimant had “gone through Gary and therefore he felt he was doing the right thing” but later stated that she thought he should have told his TL but she put it no higher than that. Ms. Unsworth’s evidence on this point changed in her statement at paragraph 124 where she stated that the Claimant went about it the wrong way, however to Mr Steer she accepted that the Claimant would have felt he was doing the right thing.

56. Mr Warwick told Mr Downey in the investigation of the Claimant’s appeal on page 526, that he was putting Ms. Unsworth in the picture of what had happened. The Tribunal find as a fact and on the balance of probabilities that Mr Warwick approached Ms. Unsworth the day before the Claimant’s interview to provide her with his negative views about the Claimant attending the Wembley event from his perspective and was annoyed at the time. Ms. Unsworth’s evidence about her view of whether the Claimant breached any protocols or procedures changed, at the time she felt that the Claimant had done the right thing but in Tribunal she changed her view of his conduct saying that he “did it the wrong way”. The Tribunal accept however that she felt that the Claimant should have informed Mr Warwick. The Tribunal also find as a fact and on the balance of probabilities that Mr Warwick told Ms Unsworth and Mr Wood what he alleged Mr Howard said about the Claimant.
57. It was noted by the Tribunal that in Mr Warwick’s interview with Mr Steer (page 468) he denied discussing the Wembley incident with Ms Unsworth. However in an interview with Mr Downey on the 4 July 2019 in connection with the Claimant’s appeal, he conceded that he spoke to Ms Unsworth after speaking with Mr Wood (page 629). In that interview Mr Warwick admitted that he said to Ms Unsworth that the Claimant “wasn’t right” for the football at that time which strongly suggested that they spoke in negative terms about the Claimant’s abilities.
58. The Tribunal therefore find as a fact the day before the Claimant’s interview, Mr Warwick spoke to Mr Wood and Ms Unsworth to share his negative views about the Claimant in his role and also his view about his ability to advance. We also find as a fact that he shared comments that he attributed to Mr Howard with Mr Wood and he also relayed these comments to Ms Unsworth. The Tribunal also conclude that even if Mr Warwick was not aware of the precise dates of the interviews, he had been present during the individual consultation meetings and as a manager would have been aware of the restructure and interviews that were to take place and who was to conduct those interviews.

The interview for the MSO role

59. The interview was conducted by Mr Wood and Ms. Unsworth on 1st June at 4.15pm. Their brief typed notes of the interview are at 283 c and d. The Claimant was not aware of the questions that he would be asked in advance, but he was told that he could take in notes to refer to, which he did. Mr Wood and Ms Unsworth said that he read from these notes in the interview. Although there were eight questions asked in the interview, the Tribunal did not go through each question and answer but highlighted examples raised by the Claimant where he alleged that the approach was hostile or unduly negative towards him.
60. When the Claimant came out of the interview, he took some contemporaneous notes of the questions and answers given at the interview before returning to the studio at 5.50pm, these were seen at pages 26-28; he characterized the interview as being overtly hostile. The Tribunal compared the notes of his answers given to the questions and the notes taken by the interviewers and they appeared to be relatively accurate particularly for questions 1 and 2. He stated that he got the impression that they viewed him as providing the wrong or inadequate answers or deliberately misinterpreted them. The Claimant stated in cross examination that their notes of the meeting didn't include all the details and didn't give an accurate impression of his performance.
61. The Claimant in his contemporaneous notes explained that in one of his answers (in answer to the 1st question but we conclude it was the answer to the 6th question), he said he would always approach the work in the same professional manner and the highest standards whether he was on a fixed term contract or a permanent contract. Mr Wood's notes at 283(b) recorded part of this answer as 'FTC - perm - no difference for me'. Ms Unsworth recorded at 283c 'will have some high standards as perm, no difference on personal front. Sense of pride'. Mr Wood felt that the Claimant's answer to this question was misjudged as he felt there was a big difference for someone going into a new MSO role. Whereas Ms Unsworth at para 70f of her statement concluded that the Claimant gave no indication of wanting to grow or move upward in the company and felt that he should have the same high standards whether staff or freelance. In cross examination she told the Tribunal that she was unsure 'how comfortable he would be' as he had said he would be getting out of his comfort zone. This was an example where the Claimant's answers were perceived to be negative whereas others were viewed as positive. In cross examination she told the Tribunal that she "*thought the Claimant was good at his job but I didn't realise he had not been trained*".
62. The Tribunal note that both interviewers perceived the Claimant's comment to be negative. The Tribunal noted that the Claimant had indicated in his answer to the first question that he wanted to improve and gain new skills and progress to floor managing to Match Day FM or maybe lighting, therefore this was evidence that the Claimant wished to grow. Ms Unsworth was asked about question 6 and her score and she stated that to her knowledge the Claimant hadn't been coming in to trail and she was not convinced that he would 'settle into the training'. However the Tribunal have found as a fact that she had been told by Mr Warwick that he had arranged to trail Mr Howard at Wembley the day before, although that was not for the new MSO role, it showed initiative which Mr Wood said was viewed as a positive thing. The Tribunal note

that her view about whether the Claimant would settle into the role appeared to have been influenced by on a comment about the Claimant's ability to carry out his role and his ability to advance that had been relayed to her by Mr Warwick the day before the interview.

63. The Claimant was cross examined about his answer to question 8 which was 'a presenter/guest's talkback fails to work whilst on air, how would you deal with this issue?'. The Claimant answered as follows: 'I would cue the presenters if needed and notify both the director and Sound. I then said I would try and locate the problems from skills I learnt from Sound by dealing with it out of shot, during a VT or a break' (see page 27 of the bundle). In cross examination it was put to him that this was not the answer he gave at the interview. He said it was, as ear packs go off all the time and he had dealt with this on the floor thousands of times. The Claimant told the Tribunal that if he couldn't deal with this it would have been flagged up at an early stage of his employment.
64. It was put to the Claimant in cross examination that Ms Unsworth said in para 70(h) of her witness statement he had given completely the wrong answer as he should have mentioned hand signals first. The Claimant replied that he would cue, which was the same thing. Ms Unsworth's analysis of his answer was that it was 'shocking' and said that what he should have said was to jump beside the camera and give hand signals. The Tribunal noted that Ms Unsworth included the words 'no concept of hand signals' in her interview notes. This was a personal comment and not a note of what was said in the interview. This evidence appeared to corroborate the Claimant's view that Ms Unsworth may have been hostile or at least negative towards him during the interview.
65. The Claimant was asked a question in the interview about being a team player, which was question 2 and the Claimant replied that when he was working on two shows and mentioned "Anthony Joshua and PTB breaking down". He also referred to his good relationship with the Presenters and Directors. Ms Unsworth was asked about this answer in cross examination and she felt it was not a good answer because he mentioned Directors and Presenters which were viewed as the 'client' and not part of his team. She felt that Mr Taylor gave a far better answer than the Claimant; he referred to working as a barman when he was promoted to Team leader and a reference to "an awkward moment, find out what happened and give a clear explanation of how to do it".
66. In cross examination Ms Unsworth was taken to a number of the answers given by the Claimant in the interview. One of the questions was to give an outline of where constructive but negative feedback was given and she felt that his answer was that he sometimes jumped in to help with training of those in different disciplines. She felt that this answer showed he was not learning because he gave multiple examples of a situation where he should not have been involved at all and felt this was a bad example as it related to helping those in a different discipline.
67. Mr Wood was cross examined on the answers given by the Claimant and Ms Luu-Moynihan in answer to question 8. He scored Ms Luu-Moynihan 3 points whereas the Claimant only received 2 points. He accepted that Ms. Luu-Moynihan also didn't refer to hand signals or cues. When Mr

Wood was asked about this he accepted that the answer was similar to the Claimant's and that he took advice from Ms Unsworth when scoring the Claimant but Ms. Luu-Moynihan was interviewed by Mr Muir. Even though Mr Muir interviewed Ms. Luu-Moynihan the Tribunal noted that the scoring of this answer did not appear to be consistent, the Claimant scored less and his answer was categorised as 'shocking' yet Ms. Luu-Moynihan scored higher and was appointed. Even if Mr Wood had relied on the specialists in the interview there was no evidence that he ensured that the scoring was consistent and fairly applied to the candidates. The Tribunal find as a fact that Ms Unsworth's view that the Claimant's answer was shocking did not appear to be a view shared by her colleague Mr Muir and we conclude that the comment made on the interview form reflected her negative perception of the Claimant.

68. Ms Unsworth confirmed that after the interview she and Mr Wood spoke and they agreed they were not happy that the Claimant had read from notes when responding to the technical questions because in her view "*it should have come from his head and a lot of people had done training before*". Ms Unsworth in cross examination said he was not offered the job because "*we didn't feel he was ready for the role or that he was able to do his role*". This was a derogatory remark which was unsupported by any evidence as we have found as a fact that in his contract renewal meeting there appeared to be no concerns about the Claimant's performance.
69. Ms Unsworth was asked by the Tribunal whether in the interview she asked any follow up questions and she answered that she did not as she was not sure she was able to because Mr Wood was leading the interview. And she could not recall if Mr Wood asked any such questions.

The Claimant's conversation with Mr Warwick on the 1 June 2018

70. After the interview (and after preparing his contemporaneous notes of the interview) the Claimant went onto the studio floor to relieve Mr Eagles early as had previously been agreed as part of a deal. Mr Eagles had reminded him in the text at p229a that he was due to take over at 5.30pm and the Claimant texted back to state that he would be a few minutes late because of the interviews. We have seen the evidence of Mr King in his interview with Mr Steer on 31st July 2018 where he stated that Mr Warwick came into the office looking for the Claimant and Mr King told him he was in an interview. In a later interview with Mr Downey at p546 he could not recall who told him that the Claimant was in an interview but he got the impression that Mr Warwick knew that the Claimant was in an interview. When Mr Warwick was taken to this evidence he again told the Tribunal that Mr King was lying as he was part of the Claimant's clique.
71. Although Mr Warwick denied he was aware that the Claimant was in an interview, we conclude on the balance of probabilities that he knew because he was his line manager at the time and because Mr Eagles had been reminded by the Claimant a few hours earlier that he was attending the interview. Mr Eagles and Mr Warwick were friends and were talking when the Claimant reported for duty therefore it was more likely than not that Mr Warwick knew that the Claimant was being interviewed that day.

72. The evidence of Mr King was put to Mr Warwick in cross examination and he told the Tribunal that he thought that Mr King was lying, as he was part of the Claimant's clique. Although Mr Warwick denied knowing that the Claimant was in an interview we prefer the evidence of the Claimant supported by Mr King, that Mr Warwick was aware of this as he had been told by others.
73. The Tribunal will now deal with the parties' recollection of the conversation. The Claimant's recollection was that Mr Warwick told him that he had spoken to Mr Wood and Ms Unsworth, who had given him advice. He said that Mr Wood had agreed with him that the Claimant lacked courtesy and '*was not good enough and not suitable for the new job*'. The Claimant also said that Mr Warwick had told him he had spoken to Ms. Unsworth about the Wembley incident and she was very unhappy. Mr King was a witness to the conversation (but did not hear what was said). The Claimant said that Mr Warwick proceeded to intimidate the Claimant accusing him of dishonesty, letting people down and not being a team player. This description appeared in the Claimant's further particulars on page 28 of the bundle. The Tribunal did not have an agreed version of what was discussed however the corroborative evidence suggested that the Claimant was very distressed during this encounter as he was red in the face and visibly upset on the evidence of Mr King (page 447 in the interview conducted by Mr Steer).
74. The Claimant's evidence was contradicted by Mr Warwick who said in Tribunal 'that he went ballistic and was like a raging bull' and in his interview with Mr Steer on the 6 August 2018 (page 469) he stated that the Claimant was 'extremely aggressive'. However, Mr Warwick's version of events was not corroborated by those who were present at the time. The Claimant's evidence corroborated his version of what was discussed. We were taken to page 292 which was the Claimant's email to Mr Warwick dated the 4th June where he referred to Mr Warwick informing him of a conversation with Mr Wood which he stated undermined his chances of being offered a full time position at the respondent. The Tribunal also find as a fact and on the balance of probabilities that Mr Warwick accused him of not being a team player and had raised the issue of courtesy as the team player matter had been raised by Mr Warwick before with the Claimant. It was also entirely consistent with Mr Warwick being very angry with the Claimant and wanting to talk with him to 'prevent a repeat' of the Wembley incident.

Notification of outcome of the interview.

75. Ms. Unsworth and Mr Wood met with the Claimant on 7th June to give him feedback on his interview. The Claimant was informed that he was not successful he also stated in his witness statement that he was told he was not good enough and only had 5 working days left with the company. Although Mr Wood denied referring to the end of his contract, he accepted that there was confusion around the Claimant's contract end date. We therefore conclude that the Claimant's contract was due to end of 31st July and not on 30th June as erroneously referred to by Mr Wood in this meeting and this was referred to in the feedback meeting. It was not disputed that Ms. Unsworth stated that the Claimant could be offered

freelance shifts in his existing role of Floor Assistant which we felt added further weight to the Claimant's evidence that the end of his contract was mentioned and the possibility of further work was discussed.

76. There was a dispute in the evidence as to the Claimants demeanour in this meeting. Ms. Unsworth alleged that the Claimant 'flew into a rage' during this meeting however when this was put to Mr Wood in cross examination he did not agree. It was noted that Ms. Unsworth's evidence on this point did not appear consistent as she told Mr Steer in her interview on the 26 July 2018 (page 436) that no feedback was provided to the Claimant as he was 'not in a good place', which tended to suggest someone who was disappointed or upset rather than someone who was aggressive. She made no mention of the Claimant flying into a rage in this interview.
77. As this was disputed the Tribunal having seen the demeanour of the Claimant in Tribunal prefer the evidence of Mr Wood that the Claimant did not fly into a rage. It was noted that both Ms. Unsworth and Mr Warwick had described the Claimant of flying into a rage or acting like a raging bull; the Tribunal conclude that these descriptions were exaggerated and inaccurate and their evidence was embellished for the Tribunal hearing
78. It was also noted in this interview Ms. Unsworth told Mr Steer (page 438) that had he asked for feedback they would have provided it and "we probably have re-interviewed him". This was put to Mr Wood by Mr Steer in his interview (page 454) and he said that he would not re-interview the Claimant for the role.
79. It was also noted by the Tribunal that Ms. Unsworth was asked by Mr Steer in the interview her assessment of the Claimant in his role and she described him as excellent. There was no evidence to suggest that he was struggling in his role or that his performance was adjudged to be substandard in any way.

The Claimant's appeal following the decision not to appoint him to the role

80. The Claimant appealed the decision not to appoint him to the role. In his appeal, he referred to the Wembley incident and to the discussion that took place directly after his interview. This email was dated the 8 June 2018 on page 294-5 of the bundle addressed to both Mr Wood and Ms Unsworth. He referred to what he described as a personal campaign against him using 'intimidating tactics' and often undermining him saying he was not a team player. He referred to what he had been told by Mr Howard that in Mr Warwick's view he wasn't up to the job. The Claimant raised a concern that a few minutes after the interview finished, Mr Warwick informed him that he had "*intervened and spoken to both of you about the Coventry v Exeter game, clearly giving you a one sided version and probably not informing you that the Head of Sky Football had cleared the shadowing work*". He also went on to say that Mr Warwick had told him that "*[Mr Wood] agreed with him, in that I lacked courtesy and I was not suitable to work as an MSO job*". The Claimant stated that Mr Warwick had told him he had spoken to both Mr Wood and Ms Unsworth

and *“he believed he had done enough to prejudice my chances of securing an MSO role”*. The Claimant stated that he wished to appeal the decision and about the *“malicious and prejudiced behaviour of Mr Warwick and his intervention into the interview process to stop me having a fair and transparent interview”*.

81. The Tribunal noted that the Claimant made no mention of the Lacey grievance (see above at paragraphs 4 and 6) being behind the events referred to in his grievance as he only discovered this after termination of his employment (see his statement dated the 9 June 2019 page 623A).

Breach of Confidentiality by Ms. Unsworth.

82. The Claimant referred to what he described as a whispering campaign against him by Ms Unsworth. The first evidence of this was on page 298 which was an email dated the 22 June 2018 from the Claimant to Ms. Unsworth asking her to stop sharing untruths about his interview. The Tribunal saw in the bundle a text sent to the Claimant from a colleague on the same day giving details of an incident where Ms. Unsworth told Ms. Said her version of the Claimant’s performance at interview, which was not complimentary (see pages 298f-g). Ms Unsworth accepted that she may have spoken to Ms Said as on that day she had been confronted by Mr White, a well-known presenter on Talk Sport, asking why the Claimant did not get the job. Ms Unsworth alleged that Mr White grilled her and “broke her down”. She accepted that she may have told Mr White that the Claimant could not answer the most basic questions. She told the Tribunal that it was after the grilling from Mr White she may have told Ms Said about the interview. The Tribunal therefore find as a fact and on the balance of probabilities that Ms Unsworth spoke to two people giving her negative perceptions of the Claimant’s interview, this was a breach of confidentiality and would have been distressing to the Claimant as by this date she was his line manager.

83. The Claimant’s grievance was investigated by Mr Steer and he interviewed a number of people, the Claimant was the first to be interviewed on the 11 July 2018 (page 331). The focus of the grievance was the conduct of Mr Warwick from 28 May 2017 onwards, the comments made in his contract renewal meeting in November 2017, the Wembley incident, the interview and the comments made by Mr Warwick directly after the interview and the decision not to appoint the Claimant to the permanent role. The Claimant maintained that Mr Warwick had sabotaged his interview and had disseminated falsehoods about him not being a team player (pages 335-340).

84. After the interview the Claimant emailed Mr Steer clarifying his grievances on the 16 July 2018 (pages 389-390). He also referred to what he described as a ‘backlash’ which he described as a whispering campaign where he had heard that people were saying it was ‘sour grapes’ and he was ‘playing the victim’. He attached a photograph of a post-it note attached to a dead battery where the words “Sean McDuff Battery” appeared. He asked for this to be investigated and for action to be taken to stop the campaign against him.

The Claimant’s resignation.

85. The Claimant resigned by email dated the 19 July 2018 (page 403A-B), having secured a role as Floor Manager at IMG after attending an interview on the 4 July 2018. In his email on pages 403A-B he referred to Ms. Unsworth breaching confidentiality by telling Ms. Said that he did not know the answers to basic questions in his interview and she told other staff. He also stated that he had been told by Mr White that he had done badly in the interview. The Claimant was concerned that this 'version' had now become widespread. He confirmed that he did not wish to pursue a grievance against Ms. Unsworth but just wished to get on with his life. He asked that Ms. Unsworth be told to refrain from telling a version of the events that was untrue and had the potential of damaging his career. He informed the Respondent that he had secured a role as Floor Manager in another company after attending a competitive interview. He suggested therefore that the reason he did not secure the role with the Respondent company was due to some hidden agenda.
86. In his letter of resignation, he referred to an incident that day where Ms. Unsworth had left an instruction for the Claimant to provide training for a new recruit as a Floor Manager. He stated he felt that this was inappropriate as she had dismissed him because in her view, he was not up to the right standard for the role. This instruction given by Ms. Unsworth was only a matter of weeks after she had formed the view that he was unable to perform his role. This incident was put to Ms. Unsworth during the investigation conducted by Mr Downey on the 9 January 2019 (page 528) and she stated that this was not intentional, this was an accident which was rectified when it came to light.
87. The Claimant referred in his resignation to the petition handed in by 40 members of staff and the support of presenters that had kept him going
88. The Claimant worked his last shift with the Respondent on the 24 July taking annual leave due and owing for the last few days of his employment

Team Player

89. There was consistent and credible evidence the Claimant had been given the reputation of not being a team player and this became common knowledge amongst Floor Managers. Mr Warwick admitted raising it with the Claimant in the contract renewal meeting and others were aware that this had been said (Femi Oridota (page 475 of the bundle). Ms. Unsworth who was interviewed on the 26 July 2018 (page 437 of the bundle) also confirmed that she had heard the Claimant being described as someone who was not a team player.
90. Ms. Unsworth did not know who started this rumour but told Mr Steer in her interview that *"I can understand where this came from however I think that's a lack of communication...Sean's a person that if you speak to him about an issue you have, he'll be very flexible about it, but if you don't speak to him about it he'll do what he does"*. This evidence suggested that she was of the view at the time the interview took place that the Claimant was a team player, but he had to be approached to do a deal. However, in cross examination Ms. Unsworth's evidence appeared to

change in that she was asked about the team player reference and she said “*a number of people felt that way – most of the freelancers and staff – I felt that way*”. This was not what she told Mr Steer. The Tribunal noted that this was another example of Ms. Unsworth’s evidence changing and being exaggerated when giving evidence in Tribunal. Mr Oridota had also recalled hearing people refer to the Claimant as not being a team player but he did not agree with this sentiment (page 475).

91. Mr King was asked about whether the Claimant was a team player and he confirmed that he had heard Mr Warwick and other floor managers say this (page 446 and 448) in his interview on the 31 July 2018. Mr Warwick was taken to this in cross examination and said it was wrong. Mr King stated that he felt the Claimant was a team player and felt that there was a clique mentality that the Claimant did not fit into.
92. Mr Warwick in cross examination said that a number of people were making comments about him not being a team player. In his view the Claimant was “*quite happy to take and not willing to give, it is courtesy to do it back*”. This was not a view shared by other staff who were interviewed at the time.

Evidence given by Mr Clifton

93. Mr Clifton a sound assistant was interviewed by Mr Steer on the 16 August 2018 (pages 476A-B). He described Mr Warwick as a “nasty bully” with a “spiteful streak”. He recalled an incident where Mr Warwick had said to him that he couldn’t do his job and this was said in front of others. Mr Warwick was asked about the evidence of Mr Clifton and he appeared to recall in detail the incident and in his view Mr Clifton struggled to keep up with the pace. Mr Warwick told the Tribunal that he did not have time to “cuddle and be nice to them”. Mr Warwick told the Tribunal that Mr Clifton was lying.

Grievance outcome

94. The Tribunal do not need to make detailed findings of the outcome of the grievance or of the appeal because the Claimant resigned before the grievance was complete. The Tribunal noted that the grievance outcome was delivered on the 25 October 2018 (page 485-9). Mr Steer did not uphold the Claimant grievance about the different treatment of fixed term staff as compared to permanent staff as he concluded that his length of service as a freelance employee did not count towards his accrued service. He concluded that the Claimant’s length of service started on the 31 January 2017, but no service counted towards his continuous service prior to that date. He concluded that the process followed in the reorganisation was not flawed. However, the Tribunal noted that Mr Steer was provided with the dates of the Claimant’s contracts on the 21 August 2018 (page 481) which showed that his first fixed term contract was on the 2 February to the 6 October 2015. He was then rehired on the 1 February 2016 and his employment appeared to continue without a break until termination.
95. Mr Steer upheld the Claimant’s grievance in respect of Ms Unsworth’s breach of confidentiality, and he had discussed this matter with Ms

Unsworth. Mr Steer partially upheld the Claimant's grievance that Mr Warwick's behaviour had been hostile towards him since May 2018 and he was concerned about the discrepancies in some of the accounts given by Mr Warwick as compared to others. Mr Steer indicated that feedback was required to make Mr Warwick to ensure he is more 'mindful' of how he presents himself in the workplace.

The Claimant's appeal

96. The Claimant then appealed the decision by a letter dated the 1 November 2018, but the outcome was not sent to him until the 17 June 2020.
97. During his grievance appeal interview on the 20 December 2018 (page 519C), the Claimant raised a concern that Mr Warwick had contacted him at his new job. He was concerned that Mr Warwick would 'scupper him'. The Claimant voiced a concern that Mr Warwick knew his new manager.
98. Mr Warwick accepted when it was put to him in cross examination that he approached Mr Howard in December 2018 (see evidence of this on page 531 of the bundle in an email sent in January 2019) when they were at Cardiff working on the Nations League game to speak about the investigation. He spoke to him because in his view *"I still could not believe what he said and how he put it on me. I couldn't believe how he could be two faced and a lot of decent people were under investigation"*. Mr Warwick accepted that at this time he was under an NDA (even though he told the Tribunal that he did not sign one) so should not have been discussing this with anyone.
99. Mr Warwick was interviewed on the 15 January 2019 (page 535 of the bundle) and he accepted that he texted the Claimant on the 2 December 2018 as he had heard that the Claimant had made derogatory comments about him at IMG (page 511A). He said he had been told this by others. He did not say who had told him but it was not disputed that Mr Eagles had been working at IMG. The Tribunal were told that Mr Eagles was working there in breach of his contract with the Respondent, as a result of the Respondent discovering this, he was dismissed. Mr Warwick's opinion was that the Claimant was making defamatory statements about him because he was bitter about what had happened.
100. Mr Warwick admitted in his interview on the 15 January 2019 with Mr Downey that he had breached his non-disclosure agreement by talking to Mr Howard. He also accepted that he was told to stop contacting the Claimant. At the end of this interview Mr Warwick said that he had done his best to include the Claimant into the team and used the ATP tickets as an example (see page 537 of the bundle).
101. As part of the appeal investigation Mr Downey interviewed Mr Harris on the 23 January 2019 (pages 549-556). He described a time when Mr Warwick threw gaffer tape at his head when he was on set. He reported the matter to his manager at the time as the thing that concerned him was this was done on set while he was working. He described it as purely a bad joke. He said that when he was asked outside by Mr Warwick after he

had complained about his conduct, he agreed with Mr Downey that he was passive aggressive to him (page 551) and he accused him of “grassing him up”. He also confirmed that he was of the opinion that there were cliques with the Floor Manager team and described the situation as being “in”, and the decision of whether you were “in” was decided by one person, who in his view was Mr Warwick. Mr Harris stated that “*I got the impression he wants to be head FM*”. He gave the opinion that “*if you were new and not that confident and of a certain disposition, you’d find it very difficult to deal with [Mr Warwick]*” (page 552). He also was of the opinion, having worked with the Claimant, that he would not be deal with Mr Warwick very well and he confirmed that if it continued it would feel like bullying. He also confirmed that he witnessed the Claimant getting more and more down as time went on during his time in SSN but the Claimant never told anyone who was responsible (page 555 of the bundle).

102. Mr Warwick was asked in cross examination about this statement and he denied calling Mr Harris a grass and it was his recollection that they both apologised to each other. Mr Warwick described the incident as being jovial and lighthearted and as a bit of ‘banter’.
103. Mr Warwick told the Tribunal that like Mr Clifton, Mr Harris was also lying. He was of the opinion that they were friends and were used to working at a slower pace and they had a lot of quiet time. He told the Tribunal that they were both lying and also that the Claimant had a “*massive input on these statements*”. There was no evidence to suggest that this was the case.
104. The Tribunal saw a statement provided by the Claimant dated the 9 June 2019 (page 623A) where he stated that he had been told by two ex-colleagues at SSN that they had heard rumours after he joined that he had a history and had made false allegations against Mr Lacey.
105. Mr Warwick was again interviewed on the 4 July 2019 (pages 624-642) and he was taken in cross examination to page 641 where he referred to an alleged complaint that the Claimant had pursued at IMG in respect of hours of work. He accepted that he was aware of what the dispute was about. He also became aware that the Claimant left IMG but denied being instrumental in his decision to leave. The Tribunal were taken to page 298A which was a text to the Claimant from a friend who confirmed that Mr Eagles had spread an inaccurate story about the Claimant’s history at SSN as they “only had Eagles story”. The Tribunal find as a fact that Mr Eagles was the person sharing a one-sided view of the Claimant’s grievance and he also shared confidential details about his employment at IMG with Mr Warwick.
106. Mr Downey told the Tribunal that he did not find Mr Warwick to have bullied staff because in his view there was only one confirmed incident as all the other incidents were disputed. He told the Tribunal however that he felt that the actions of Mr Warwick were “childish and immature”. Mr Downey also told the Tribunal that he did not think the Claimant did anything wrong going to the Wembley game, he felt that it showed he had “energy”. He also told the Tribunal in cross examination that it was not an

issue for Mr Wood, Mr Warwick however was annoyed about it. Mr Downey's appeal outcome was dated the 17 June 2020, this took 17 months to complete.

107. The Law

Employment Rights Act 1996

43A Meaning of "protected disclosure"

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.]

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).]

95 Circumstances in which an employee is dismissed

(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.

98 General

(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,

[(ba) ...]

(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.

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)—

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 shall be determined in accordance with equity and the substantial merits of the case

103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.]

Fixed Term Employees (Prevention of Less Favourable Treatment) Regulation 2002

Regulation 2 Comparable employees

(1) For the purposes of these Regulations, an employee is a comparable permanent employee in relation to a fixed-term employee if, at the time when the treatment that is alleged to be less favourable to the fixed-term employee takes place,

(a) both employees are—

- (i) employed by the same employer, and
- (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills; and

(b) the permanent employee works or is based at the same establishment as the fixed-term employee or, where there is no comparable permanent employee working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

(2) For the purposes of paragraph (1), an employee is not a comparable permanent employee if his employment has ceased.

Regulation 3 Less favourable treatment of fixed-term employees

(1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee—

- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) Subject to paragraphs (3) and (4), the right conferred by paragraph (1) includes in particular the right of the fixed-term employee in question not to be treated less favourably than the employer treats a comparable permanent employee in relation to—

- (a) any period of service qualification relating to any particular condition of service,
- (b) the opportunity to receive training, or
- (c) the opportunity to secure any permanent position in the establishment.

(3) The right conferred by paragraph (1) applies only if—

- (a) the treatment is on the ground that the employee is a fixed-term employee, and
 - (b) the treatment is not justified on objective grounds.
- (4) Paragraph (3)(b) is subject to regulation 4.
- (5) In determining whether a fixed-term employee has been treated less favourably than a comparable permanent employee, the pro rata principle shall be applied unless it is inappropriate.
- (6) In order to ensure that an employee is able to exercise the right conferred by paragraph (1) as described in paragraph (2)(c) the employee has the right to be informed by his employer of available vacancies in the establishment.
- (7) For the purposes of paragraph (6) an employee is “informed by his employer” only if the vacancy is contained in an advertisement which the employee has a reasonable opportunity of reading in the course of his employment or the employee is given reasonable notification of the vacancy in some other way.

Regulation 4 Objective justification

- (1) Where a fixed-term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of his contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.
- (2) Paragraph (1) is without prejudice to the generality of regulation 3(3)(b).

Regulation 6 Unfair dismissal and the right not to be subjected to detriment

- (1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part 10 of the 1996 Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).
- (2) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, of his employer done on a ground specified in paragraph (3).
- (3) The reasons or, as the case may be, grounds are—
- (a) that the employee—
 - (i) brought proceedings against the employer under these Regulations;
 - (ii) requested from his employer a written statement under regulation 5 or regulation 9;
 - (iii) gave evidence or information in connection with such proceedings brought by any employee;
 - (iv) otherwise did anything under these Regulations in relation to the employer or any other person;
 - (v) alleged that the employer had infringed these Regulations;
 - (vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations;
 - (vii) declined to sign a workforce agreement for the purposes of these Regulations, or
 - (viii) being—

- (aa) a representative of members of the workforce for the purposes of Schedule 1, or
- (bb) a candidate in an election in which any person elected will, on being elected, become such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate, or

- (b) that the employer believes or suspects that the employee has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for dismissal or, as the case may be, ground for subsection to any act or deliberate failure to act, is that mentioned in paragraph (3)(a)(v), or (b) so far as it relates thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the employee is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to dismissal within the meaning of Part 10 of the 1996 Act.

Regulation 7 Complaints to employment tribunals etc

(1) An employee may present a complaint to an employment tribunal that his employer has infringed a right conferred on him by regulation 3, or (subject to regulation 6(5)), regulation 6(2).

(2) Subject to paragraph (3), an employment tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning—

- (a) in the case of an alleged infringement of a right conferred by regulation 3(1) or 6(2), with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them;
- (b) in the case of an alleged infringement of the right conferred by regulation 3(6), with the date, or if more than one the last date, on which other individuals, whether or not employees of the employer, were informed of the vacancy.

[[2A) Regulation 7A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2).]

(3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2)(a)—

- (a) where a term in a contract is less favourable, that treatment shall be treated, subject to paragraph (b), as taking place on each day of the period during which the term is less favourable;
- (b) a deliberate failure to act contrary to regulation 3 or 6(2) shall be treated as done when it was decided on.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(b) to decide not to act—

- (a) when he does an act inconsistent with doing the failed act; or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to have done the failed act if it was to be done.

(6) Where an employee presents a complaint under this regulation in relation to a right conferred on him by regulation 3 or 6(2) it is for the employer to identify the ground for the less favourable treatment or detriment.

(7) Where an employment tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable—

- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;
- (b) ordering the employer to pay compensation to the complainant;
- (c) recommending that the employer take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

Closing Submissions

These were oral and in writing and will not be replicated in this decision however they will be referred to

Decision

The unanimous decision of the Tribunal is as follows:

108. The Tribunal in this case has before it two different versions of the events in relation to the restructure. We have made findings of fact about the inconsistent evidence provided by Ms McMillan where she sought to distance herself from emails written either at the time or shortly after the restructure in connection with the grievance process. We have concluded that her contemporaneous documents were likely to have been the most accurate advice provided at the time and her subsequent evidence unreliable. We also have noted that the documents created to introduce the restructure were clear, that there were 15 roles to be created. The two phases related to the training provided to the permanent staff which started in May followed by the training provided to the fixed term staff, who had to first interview for the role. The permanent staff did not have to attend an interview and were assimilated into the role. Both the permanent and fixed term staff held only one discipline, and all were expected to take on three disciplines in the new MSO role.

109. Although Mr Ramsay told the Tribunal that the Claimant was not told that there were 15 roles available at the time, this was unsupported by the contemporaneous documents before us. It was noted that the Respondents defence was amended after the preliminary hearing, which found the Claimant had two years' service; after the preliminary hearing reference to 15 positions was removed from the ET3. Although this was removed this did not change the factual scenario that we have found as a fact was in place at the time.

Decision on the credibility of witnesses

110. The Tribunal also had the before it, very different versions of events provided by Mr Warwick and the Claimant. The Respondent has asked the Tribunal to conclude that where there is a conflict of evidence between the Claimant and Mr Warwick that we should find in favour of Mr Warwick and of the Respondent's witnesses. The Respondent in the closing submissions at 108-109 referred to what they describe as the Claimant's conspiracy theories and the manner in which the Claimant interpreted one particular text from Mr Warwick in a negative way. However, the text was sent by Mr Warwick to the Claimant after termination of his employment and reflected that Mr Warwick had been told what the Claimant was saying in his new employment. Mr Warwick was warned about this text and told to stop contacting the Claimant. The second point that is referred to in the Respondents closing submissions was that in the Claimant's resignation letter, he failed to mention that he had spoken to Mr White and this may have been the cause of the presenter then speaking to Ms Unsworth. It is difficult to see how failure to mention a conversation could result in the Tribunal finding the Claimant to be unreliable on other points, especially where they are corroborated by contemporaneous documents or by eyewitnesses. The other point that is referred to in the Respondents closing submission was the Claimant's practice of referring to himself as a floor manager rather than floor assistant and his failure to refer to the fact that he had written to the Head of Football to arrange his Wembley trail, and he failed to mention this in his grievance. Although the Claimant did not include this fact in his grievance letter this was not evidence that the Claimant was either an unreliable or dishonest witness.

111. We compare the Claimant's evidence to the Respondents witness evidence. We have found as a fact that Mr Warwick sometimes provided false evidence. He accepted that he was untruthful about providing the Claimant with ATG tickets. The evidence he gave to Mr Steer in the investigation for the Claimant's grievance was that he only spoke to Mr Wood prior to the interview, however, this was contradicted by Ms Unsworth and he accepted, when interviewed by Mr Downey that he also spoke to her. We have found as a fact that both Mr Warwick and Ms Unsworth had described the Claimant as acting in an aggressive manner using words like "raging bull", this we found to be an exaggeration as Mr Wood, who was also a witness to the Claimant's conduct in the feedback meeting on 7 June disagreed with Ms Unsworth's description of the Claimant. We have also seen the Claimant in Tribunal and words like raging Bull did not seem to be an accurate representation of his conduct, even when under pressure.

112. The Respondent in closing submissions described the Claimant and his hatred towards Mr Warwick as being visceral (paragraph 58). This is not a description that accords with the evidence before us. There was no evidence to suggest that the Claimant had acted in bad faith or with improper motive towards Mr Warwick. It was noted that Mr Harris, in his interview with Mr Downey on 23 January 2019 confirmed that even though he was aware that the Claimant was going through a bad time, he never identified another person as being responsible and he certainly did

not name Mr Warwick. This was also corroborated by Mr Howard in his email of 14 January 2019, where he compared the conduct Mr Warwick contacting him and discussing the confidential investigation with that of the Claimant who had not contacted him at all. Mr Howard stated “have not heard from SD since the thanks text. Mark of the kid, I liked him,”. He went on to state that the Claimant did not “dish” which we took to mean talk behind Mr Warwick’s back.

113. The evidence before the Tribunal was that the Claimant did not speak negatively about Mr Warwick behind his back, neither did he discuss the confidential investigation during the term of his employment, whereas Mr Warwick did and did so in aggressive and confrontational terms. We have found as a fact above that Mr Warwick appeared to have a practice of challenging those who complained about his behaviour. We refer above to Mr Harris who was called a grass and Mr Howard, who was told that the Claimant’s conduct was affecting a number of jobs and families. Mr Warwick’s conduct therefore appeared to be hostile and confrontational, whereas the Claimant showed no signs of being visceral towards Mr Warwick.

114. It was also noted that in evidence Mr Warwick appeared to show no insight into how his behaviour affected others. He was comfortable calling Mr Clifton, Mr Harris, Mr King and Mr Howard liars because he disagreed with their characterisation of his conduct towards them.

115. We were asked by the Respondent in closing submissions to conclude that where there is a dispute on facts to find in favour of the Respondent. However, in the light of our findings and conclusions about the evidence of the Claimant as compared to that of Mr Warwick, we will find in the Claimant’s favour if there is a dispute of fact where it is appropriate to do so.

Did the Claimant raise a qualifying and protected disclosure?

116. The Tribunal will first deal with the matter of whether the Claimant in 2016 made a qualifying and protected disclosure in relation to the Lacey grievance. We have found as a fact above that this was a matter that dealt with both personal matters in relation to the manner in which the Claimant was treated by Mr Lacey and in relation to matters of wider public interest, namely Mr Lacey’s conduct towards female presenters and guests on sky News. We conclude on the facts before us that the Claimant made a disclosure of information. The information also tended to show facts which related to a breach of a legal obligation, namely sexual harassment, either under the Equality Act or under other legislation. The next issue for the Tribunal is whether or not the information disclosed was in the reasonable belief of the Claimant made in the public interest and we conclude that it was as it raised concerns about the conduct of Mr Lacey towards female members of the public. We conclude therefore on the facts that the Claimant made a qualifying protected disclosure to the Respondent.

Did the Respondent’s conduct amount to a fundamental breach?

117. The next point for the Tribunal is whether or not the Respondent conducted itself in the manner which is calculated or likely to damage or destroy the relationship of trust and confidence with employer and employee. This is an objective test and is not to be conflated with the reasonableness test used in an unfair dismissal case and it is a high burden of proof on the Claimant. In this case we are looking at a sequence or series of events that began after Mr Warwick took over a management role and became the Claimant's team leader.
118. The first incident that is relied upon is the contract renewal meeting with the Claimant where he is told that he is viewed as not being a team player. This upset the Claimant as this was the first he had heard of it. The Claimant believed that this related back to an incident the previous May. This on its own could even be seen as a positive thing whereby a new line manager is seeking to alert those they manage to perhaps a negative perception that is held by colleagues in the team. However, the team player label appeared to become common knowledge and we have found as a fact that this emanated from Mr Warwick. We refer above to our findings of fact on this matter. It was also some concern that Ms Unsworth's evidence on this point appeared to be unreliable. She told Mr Steer she was aware of the label applied to the Claimant but did not seem to agree with it. However, when she gave evidence to the Tribunal, she said that she agreed with this description.
119. The Tribunal also found as a fact that there was evidence that the Claimant relieved his colleagues and 'did deals'. For example, on the day of his interview, he was due to relieve Mr Eagles' early and this was corroborated in text messages which showed that he did work with the team. We have concluded on the facts on the balance of probabilities that the team player description was applied by Mr Warwick and was adopted by other floor managers in a manner that was negative to the Claimant.
120. The Claimant relied on a number of matters that we found to be neutral at best, for example, the incident where his father was unwell and when he took the guest card home. The Tribunal felt it was reasonable for the Claimant to be asked to bring a guest card back, especially as he failed to inform anyone that a new card could be obtained from someone in the office. The incident where his father was unwell and no concern was shown for him was upsetting to him, but again this was simply behaviour lacking in compassion and not evidence that was calculated or likely to damage or destroy the relationship. Similarly, the failure of Mr Warwick to enquire after the Claimant's health when he indicated he was unwell was another incident of behaviour that lacked compassion, but not so serious as to undermine the relationship.
121. Although Mr Warwick provided details of incidents where he had provided the Claimant with what he described as opportunities, which included the NFL events and the ATG tickets and others, we did not find Mr Warwick's evidence to be credible. There was no evidence before the Tribunal that Mr Warwick had provided career advancement opportunities to the Claimant and we preferred the evidence of the Claimant on these matters.

122. The next incident that the Tribunal concluded was serious was the incident on 5 March when Mr Warwick accused the Claimant of dishonesty in front of other staff. Although Mr Warwick described his comment as sarcastic, we heard consistent evidence from the Respondent that Mr Warwick was not a jovial person and to sarcastically infer someone of dishonesty was serious and others perceived it to be so. The witness to this incident described it as being passive-aggressive.
123. The next incident relied upon by the Claimant is the Wembley incident where the consistent evidence of Mr Howard was that Mr Warwick made disparaging comments about the Claimant's performance in his role which he perceived as negative. Mr Howard told the Claimant what was said about him and he described the Claimant as being withdrawn after that. It was clear to the Tribunal that what he had been told was upsetting and distressing and this was reflected in the subsequent emails he sent to his family. This was again a serious incident when a freelance Floor Manager with an excellent reputation in his field has been informed that the Claimant was no good at his job. This was conduct that was calculated or likely to damage the relationship between the employer and the employee as it was serious and disparaged the Claimant in the eyes of other in the industry which we heard was small and somewhat incestuous.
124. The next incident the Claimant relied upon was the approach made by Mr Warwick to Mr Wood and Ms Unsworth, which we have found as a fact took place the day before the interview. We have rejected Mr Warwick's evidence that he was unaware that the Claimant was attending an interview as he was the Claimant's line manager at the time and he had been involved in the early stages of the consultation on the restructure. Even if he had not known the precise time or date of the interview, he would have known that they were taking place during that week or shortly thereafter. We also conclude that Mr Warwick was aware that Mr Wood and Ms Unsworth were conducting the interviews and Ms Unsworth was shortly going to take over line management responsibility of the Claimant.
125. We have found as a fact that Mr Warwick was annoyed about the Wembley incident and we also found as a fact that he referred in his discussions to what he alleged Mr Howard had said about the Claimant. We have found as a fact that he was not reporting what Mr Howard said but his own negative views of the Claimant. It was not disputed that during these conversations, there was a reference to courtesy, although there was a dispute about how the word was introduced and who introduced it into the conversation. It was not disputed that they agreed that it was a matter of courtesy that the Claimant should have told Mr Warwick about trialling Mr Howard.
126. Although Mr Warwick told the Tribunal that he was simply seeking advice from his line manager Mr Wood as to how he should handle this matter, if that were the case it would be an entirely neutral and reasonable conversation. However, the fact he then went on to refer to what he alleged Mr Howard said, introduced into the conversation negative and inaccurate perceptions about the Claimant's performance and abilities.

127. Another point before the Tribunal is whether or not the Claimant accepted that he should be disciplined for failing to inform Mr Warwick. The Claimant accepted in cross examination that if he had breached protocol, then he would accept a disciplinary sanction. However, the evidence before the Tribunal was that no protocols were breached. Mr Wood made it clear that he felt that what the Claimant did was a good thing and he had shown initiative. Mr Downey said it showed that the Claimant had energy. It was also confirmed that there were no protocols in place that required Claimant to follow a particular process when arranging to go on a trial on his day off on nil pay. Although the conclusion was that as a matter of courtesy, the Claimant should have told Mr Warwick, it was put no higher than that. Although it was put to the Tribunal in closing submissions that he should have been aware that his appearance at the Wembley game could have adversely impacted a project Mr Warwick had been working on for a number of years, there was no evidence before the Tribunal that the Claimant was aware of this.
128. The Claimant was distressed by his interaction with Mr Warwick at Wembley and the text messages sent in relation to that exchange showed that he feared Mr Warwick would undermine his chances of securing a position at the Respondent. He told the Tribunal that he had not slept the night before the interview, and he was anxious about his future.
129. The Tribunal saw detailed evidence of the interview itself, which the Claimant described as hostile. Unfortunately, the Tribunal only had brief notes taken by Ms Unsworth and Mr Wood but we also had sight of the other interview conducted by Mr Muir and the notes he took when he sat with Mr Wood as the expert interviewer. We refer to our findings of fact above and noted that the Claimant was awarded less points for a similar answer given by Ms Luu-Moynihan. Ms Luu-Moynihan confirmed to the grievance investigation that the Claimant helped her take notes to prepare for this interview and it was noted that in response to a question they gave similar answers, however, the Claimant was awarded less points. The Tribunal also note that Ms Unsworth wrote a negative comment on the Claimant's interview notes.
130. Although the Tribunal can never really know how the interview went, we conclude that on those two occasions, the Claimant appeared to have been treated more harshly than his colleague. We were able to conclude on the facts that a number of the answers given by the Claimant were interpreted in a negative manner on the interview sheets whereas the answers given by the other interviewees were viewed from a positive light. This appeared to suggest that there was a measure of negativity towards the Claimant in this interview which then was relayed to the Tribunal in more extreme terms as being "shocking". However, it is impossible to tell whether or not this was due to the fact that he interviewed badly due to his concern that Mr Warwick would undermine his chances or due to the fact that he had not slept and was anxious.
131. The Tribunal now come to the exchange he had with Mr Warwick on 1 June directly after his interview. We refer above to this exchange at paragraphs 70-74. We found as a fact that the Claimant was distressed in

this exchange but not aggressive. We prefer the evidence of the Claimant as to what was said in this exchange, Mr Warwick was highly critical of the Claimant and he was keen to point out that he had spoken to Mr Wood, who had agreed with him about the Claimant's "courtesy". We have also found as a fact that he made reference to the Claimant not securing the position and he was entitled to assume from that that Mr Warwick had undermined his chances of securing a full-time position at the Respondent company. This was at a time when Mr Warwick was handing over to Ms Unsworth, who would be his new line Manager. This was conduct which is calculated or likely to destroy the relationship between the Claimant and the company.

132. The next act relied upon by the Claimant is the feedback meeting on 7 June. This is where Ms Unsworth described the Claimant as aggressive, however, Mr Wood did not agree with her analyses of the Claimant's demeanour. The Tribunal noted that Ms Unsworth did not describe Claimant as aggressive in her interview with Mr Steer, she just said the Claimant was not in a good place which the Tribunal take to mean that he was upset rather than aggressive. The change in the emphasis of her evidence caused us to conclude that she was not a reliable witness on this point. We found as a fact that the Claimant was informed of the end date of his contract, however, he was told by Ms Unsworth that he could continue to work as a freelancer, which appeared to run counter to the argument that he needed training even to do the job he had been doing for the last two years.

133. Although not in the agreed list of issues, we took into account that as the Claimant has not been legally represented at any time that we should consider the point of the breach of confidentiality that was raised in his resignation letter. The tribunal heard evidence in relation to the Ms Unsworth's breach of confidentiality (referred to above in our findings of fact) and this being included as part of the reason for the Claimant's decision to resign. We note that the Claimant did not wish Ms Unsworth to face any disciplinary action for the breach as he did not believe it to be a malicious act, it was clear that the breach was of great concern to him as it had the potential of adversely impacting his future career. The claimant clearly viewed this incident as being a further deterioration in the relationship which was a factor the Claimant took into account when deciding to resign and treat himself as dismissed.

134. The Tribunal must look at the cumulative impact of the evidence from November 2017 to June 2018 and consider whether or not viewed objectively the conduct of the Respondent was such that it was calculated or likely to destroy the relationship of trust and confidence and we conclude that it was. Mr Warwick failed to provide support to the Claimant and accused him publicly of dishonesty without any evidence to support his accusation. He told someone from outside the organisation that the Claimant was unable to perform the role for which he was paid and then shared those personal views with the interviewers shortly before they interviewed the Claimant for the permanent position. We also conclude that he labelled the Claimant as not being a team player and this was a label that was shared amongst floor managers. We conclude that cumulatively this amounted to conduct that amounted to a fundamental breach

135. The Claimant's resignation therefore amounted to a dismissal.
136. We further conclude that the Claimant resigned because of those breaches. Although it has been put to us in closing submissions that the Claimant indicated he wished to return to work for the Respondent company and repeated this in Tribunal, we conclude that the only reason the Claimant left was because of the repudiatory breaches committed by Mr Warwick and for no other reason.
137. The Claimant then resigned on 19 July after securing another position and he left on 30 July. Although it has been put to the Tribunal that the Claimant has affirmed the breaches, we do not find that waiting until he secured another position to be indicative of affirmation of a breach. The Claimant's consistent evidence was that he did not wish to leave the Respondent company and only did so because of the conduct of Mr Warwick which we have concluded amounted to a repudiatory breach. We conclude therefore that the actions of the Claimant were entirely consistent with accepting the breach.
138. We must next go on to consider whether the Respondent has shown a potentially fair reason, they refer to some other substantial reason or redundancy. The Respondent has submitted at paragraphs 79-80 of their closing submissions that the termination of the contract at the contract end date was an inevitability, however on the evidence before us we conclude that this was not the case. Ms Unsworth's evidence to Mr Steer was that the Claimant was 'excellent' at his job and Mr Warwick confirmed that at the time the Claimant's contract was extended in November 2017, there had been no concerns about his performance (save for the Team player concern). Issues only appeared to arise shortly before the interview on the 1 June and we have found as a fact that Mr Warwick's negative comments about the Claimant shared with the interviewers left them with a negative perception of his conduct and performance. The Claimant's emails to Mr Warwick before and after the interview reflected his genuine concerns that he would adversely impact his chances and we conclude that this adverse impact occurred. We also conclude that dismissal was not an inevitability.
139. Even if we are wrong on that point, we also took into account the evidence before us that Ms Unsworth offered the Claimant further work at the feedback meeting on the 7 June, after the termination of his contract on the 31 July as a freelance Floor Assistant. This was evidence to suggest that there was still work available in the single discipline role during the period of training for all those recruited into the new MSO role. We also noted that Ms Unsworth had indicated in her interview with Mr. Steer and in tribunal that she was willing to interview the Claimant again after spending some time to develop his skills, although Mr Wood denied that this was an option Ms Unsworth told the tribunal that she would be able to convince him. This evidence reflected that at the time of dismissal, there was still work that the Claimant could have been offered until October or November 2018. The Respondent has failed to show that the

dismissal was fair on the grounds of some other substantial reason or redundancy.

Was the dismissal automatically under section 103A?

140. The Tribunal must next consider whether the dismissal was for an automatically unfair reason, namely for making a protected disclosure. We have concluded that the Claimant made a protected disclosure in 2016 in relation to the Lacey grievance. We must then consider whether the conduct the Claimant relied upon was carried out because he had made a previous protected disclosure. There was no evidence to suggest that Mr Warwick, Ms Unsworth or Mr Wood was aware of the previous disclosure or of the grievance investigation or outcome. There was no evidence to suggest that M Warwick was motivated to act in this way because of a previous grievance raised by the Claimant and he made no such connection in the evidence before this Tribunal. The Claimant suggests that Mr Warwick's negative attitude started in May 2017 when he failed to relieve him early from his shift. There was no evidence to suggest that there was a causal connection between his previous protected disclosure and the subsequent conduct of the Respondent's employees. This head of claim is not well founded and is dismissed.

The Claimant's claim under the Fixed term Employee Regulations

141. The Tribunal first looked at this claim from two aspects, firstly the decision that was shared with staff on the 1 February 2018 and the Claimant's interview for the role on the 1 June 2018. Dealing first with the events that led up to the 1 February 2018, although we have found as a fact that Mr King and Mr Heath were given permanent contracts prior to the restructure, we noted that they were both lighting operatives. Although the Claimant stated in closing submissions that they gained an advantage as compared to the Claimant by being made permanent, there was no evidence that this was because of the Claimant's fixed term status. There was also no evidence that he complained about this at the time.

142. In respect of the introduction to the restructure in February 2018, it was noted that the Claimant made no complaint about the restructure at the time and did not state that he considered that the proposal was to his detriment. It was also noted by the Tribunal that the last act complained of in respect of the implementation of the restructure was the 9 February 2018, this is when time began to run. The claim should have been presented by the 8 June (taking into account one month for early conciliation). The claim form was presented on the 28 October 2018, some five months out of time. We have heard no evidence as to why the Claimant was unable to present his claim in time and no evidence to suggest that, in this case it would be just and equitable to extend time. We conclude therefore that this complaint is out of time and is dismissed.

143. The tribunal then went on to consider the second point pursued by the Claimant that he was subjected to a detriment by being required to attend an interview for the MSO where his permanent comparators were not so required. The tribunal considered the comparators relied upon by the Claimant as being those employed on permanent contracts including Mr King, Mr Heath, Mr Oridota and Mr Taylor. We did not find Ms King to be

an appropriate comparator due to the unique circumstances that applied in her case (that of being a secondee and on maternity leave). We considered the wording of regulation 2(a)(ii) of the regulations above which stated that an appropriate comparator was someone engaged “in the same or broadly similar work having regard, where relevant to whether they have a similar level of qualification and skills”. It was not disputed that by the 1 June 2018 all of the comparators were engaged on new terms and conditions as MSOs and paid on a different salary scale. We were also told that Mr King and Mr Heath completed their training within a month and were fully operational in the new role at the time of the less favourable treatment. They therefore could not be said to be engaged on broadly similar work and had taken on two additional skills as part of their role. They were therefore not appropriate comparators. The other two comparators were still undergoing training in the new role, which began on the 1 May 2018 and we conclude that it was an inescapable fact that they were engaged as MSOs at the relevant time and were undergoing training. Even though the Claimant stated in closing submissions that as a matter of fact some of the staff continued to work in their one discipline, it was not disputed that they had been engaged from the 1 May as MSOs and under the terms of their contract were required to train in and undertake three disciplines.

144. As a result, therefore we conclude that the Claimant cannot compare himself with the permanent staff as he was not at the relevant time employed in the same or broadly similar work. The Claimant’s claim is therefore dismissed.
145. The last matter before us is whether the Respondent failed to comply with the terms of the ACAS Code of practice on grievance procedures. The Claimant in closing submissions referred to the delay in receiving an outcome of his grievance from Mr Steer which we heard took 4 months. The appeal took 18 months to complete. The tribunal did not hear from Mr Steer as to the reason for the delay. Mr Downey who conducted the appeal gave two reasons for the delay the first being the need to take legal advice and secondly that they took some time to see if a resolution of the matter was possible. Although this could be a legitimate reason for a short delay, this could not justify a delay of this magnitude. The ACAS Code of Practice at paragraphs 40 and 47 require the outcome of a grievance and appeal to be communicated without unreasonable delay. We consider on the evidence that there was a breach of these two paragraphs. We conclude therefore that it is appropriate in this case to award an uplift in compensation.
146. This matter will now be listed for a remedy hearing. However, the parties are invited to see if this matter could be resolved without the need for a further hearing. The parties are given 28 days for the date of promulgation of this decision to see if the matter can be resolved by way of negotiated settlement. If that is not possible, they are to write to the Tribunal with dates to avoid for a period of 3 months. It is envisaged that one day should be enough for this hearing.

Employment Judge **Sage**

Date: 11 December 2020