EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Geoff Seers	**v**	**Metroline Travel Limited**

Heard at: Watford Employment Tribunal (by CVP)

On: 7 to 11 and 23 December 2020, 30 & 31 March and 9 April 2021 (in chambers)

Before: Employment Judge George (sitting alone; remotely)

Appearances

For the Claimant: In person
For the Respondent: Mr D Brown, counsel

RESERVED JUDGMENT

1. The claim of automatic unfair dismissal on grounds of protected disclosure is dismissed on withdrawal.

2. The claim of unfair dismissal is dismissed.

REASONS

1. In this hearing I had available and took into account the following documents:

    a. An electronic bundle of documents of 718 pages (these are referred to in these reasons as RBp.1 to 718 as the case may be);

    b. Electronic files of documents from the claimant which was in four parts which, when combined were a bundle numbered C1 to C50;

    c. An agreed chronology of key events;

    d. An opening note by the respondent.

    e. A cipher – or cast list – setting out the names and job titles of the individuals referred to in the evidence including those who had been

anonymised by consent and were referred to as Colleagues A to L (there is no colleague I).

f. A Respondent's Skeleton Argument prepared by Mr Brown (hereafter referred to as the RSA).

2. I explained to the claimant after evidence had concluded that, although he was at liberty to write down anything which he wanted to say by way of a closing speech, he did not need to do so and if he preferred to make his closing remarks on the day that would also be perfectly acceptable. He chose to do the latter.

3. In addition to hearing evidence from the claimant, I heard from the following witnesses called by the respondent. They adopted written statements as their evidence and were cross-examined upon them:

a. Darren Hill, formerly Operations Manager and now Head of HR (hereafter DH);

b. Sean O'Shea, Chief Operations Officer/CEO (hereafter SOS);

c. Stephen Harris, formerly Operations Director and now Managing Director (hereafter SH);

d. Fola Olawo-Jerome, Garage Manager – (hereafter FOJ) there were two statements from FOJ: one prepared for the interim relief application hearing and one for the final hearing;

e. Adrian Jones, Engineering Director (hereafter AJ);

f. Andrew Hunter, formerly Service Delivery Director and now Group Performance and Commercial Development Director (hereafter AH);

g. Rodolfo Brusa, Garage Manager (also known as Dodi – hereafter DB);

h. Ian Dalby, formerly Deputy Operations Director and now Regional Operations Director (hereafter ID);

i. Nick Faichney, Regional Operations Director (hereafter NF).

4. I also had witness statements which had been prepared/signed by the following witnesses who did not attend to give evidence and I have taken them into account and placed such weight upon them as it seemed proper to me to do in the circumstances:

a. Michael Leathem, former colleague of the claimant who was Operations Manager at Harrow Weald from 2016. Mr Brown indicated that, in any event, he had no questions for Mr Leathem and he was content for the statement to be taken as read.

b. Two witness statements had been prepared and signed by Irene Yesufu (hereafter IY), an HR Adviser: one for the interim relief application hearing and one for the final hearing. The respondent had exchanged those statements but indicated that they did not intend to rely upon her statements or to call her.

5. In these reasons the witnesses, and any other individuals who were named in the evidence apart from those anonymised by consent, are referred to by their initials. No discourtesy is intended thereby.

6. A brief procedural chronology of the claim is that, following his dismissal with notice with effect from 7 August 2019, the claimant, who alleged that the reason or principal reason for his dismissal was that he had made a protected disclosure to Sean O'Shea on 16 April 2019, applied for interim relief (RBp.A1). His claim form was presented on 9 August 2019 (RBp.1). The interim relief application was refused by Employment Judge Tuck QC on 2 September 2019 (RBp.A4). The respondent defended by a response form presented on 13 September 2019 in which they state their case to be that the reason for the dismissal was the potentially fair reason of "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" within s.98(1)(b) of the Employment Rights Act 1996 (hereafter referred to as the ERA) (see the summary at para.44.5 on RBp.26).

7. As a result of an order made at an earlier stage, evidence covered by without prejudice privilege had been redacted from some documents in the bundle. The claimant was assiduous in drawing to my attention a couple of places in which references to those discussions were made and redactions were made at the hearing which I have noted in my copy of the bundle. Where that was the case, I have taken no account of the redacted text. I'm grateful to the claimant for his straightforward and diligent approach to this issue.

The hearing before me

8. At the start of the second day of the hearing I heard a contested application for disclosure of documents which the claimant wished to include in evidence. The following items were requested:

a. Notes of the appeal hearing conducted by BMcW in relation to the claimant's 2015 disciplinary;

b. Colleague L's performance management paperwork;

c. The claimant's occupational health referral by LW in 2017.

9. I dismissed the claimant's application for reasons which I gave orally at the time. However, given the delay that the parties have already had to this judgment and, lest a request for reasons for dismissal of the application be made, I set out my summary reasons here.

10. I was told by Mr Brown that, despite diligent searches, the respondent had not been able to find the notes of the appeal hearing in relation to the claimant's 2014 grievance or the occupational health referral. I did not think it proportionate to order production of documents which, probably, could not be found.

11. In any event, it seemed to me that any prejudice to the claimant would be mitigated by the presence in the bundle of the occupational health report itself as well the appeal outcome letter. The claimant did not appear to disagree with the conclusions of the 2017 occupational health report and, therefore, sight of the referral was unlikely to affect my conclusions on the issues before me. The age of the documents requested meant that, despite the claimant's arguments, they were unlikely to have a significant bearing upon the issues for me to decide which primarily concerned the state of the claimant's relationship with senior management in 2019. Points about whether the claimant would be able to work in the future with JC despite the 2015 disciplinary could be put to FOJ, AH and AJ. Submissions about any inferences which should be made about the absence of relevant documents could be made by the claimant in closing.

12. As to the paperwork concerning Colleague L, it was not disputed that he had been dismissed. The relevant point concerned to the credibility of ID who would need to answer questions about the wording of his own email, given the process being followed in relation to Colleague L. That email was in the bundle (see paragraph 74 below). I understood that the relevance was said by the claimant to be about whether there was a pattern of behaviour by the company in putting forward misleading communications. However, given that the fact of the dismissal for performance reasons of Colleague L was admitted, it was not proportionate to investigate those performance proceedings in detail and not necessary for the purposes of the claimant's argument to do so.

13. The hearing had originally been listed for a ten-day hearing by EJ Bedeau (RBp.28) which was postponed due to lack of available judge. It was then case managed by Regional Employment Judge Foxwell and relisted for a 5-day hearing. In the event, it was not possible to conclude the evidence within the 5 days allocated and an additional day was scheduled on 23 December 2020 for submissions with the judgment being reserved. Unfortunately, it was not possible, due to completing professional obligations, to allocate time for deliberation and judgment writing for some considerable time which has led to a delay in the judgment being sent out for which I apologise to the parties.

14. There were some technical issues. Sometimes it was necessary for a party or representative to drop out and rejoin. The Cloud Video Platform drained the battery on the claimant's mobile phone or tablet, which he was using to access the platform, very quickly so he needed to exchange it for his wife's phone at times. I'm grateful to all parties and witnesses for the flexibility they showed in making the technology work and in ensuring that it was possible to complete the evidence in the time available.

15. In order to make effective use of the time available, a timetable was agreed between the claimant, Mr Brown and myself and revisited from time to time. On occasions it was necessary for me to rephrase questions asked by the claimant to ensure that the witnesses were able to respond and to ensure that they were relevant to the liability issues. On occasions it was necessary for me to cut short a line of questioning by the claimant or to ask him to move onto his next point. I did so in order to ensure that the time was spent focussing on the matters which it was necessary for me to hear in order to reach a conclusion on the liability issues. It seemed to be part of the claimant's case that, if he did lack confidence in the respondent's senior management, it was because they had behaved towards him in a way which lacked integrity. On one particular occasion I limited a line of questioning which appeared to accuse an individual who was not being called as a witness of wrongdoing without reasonable grounds. In the context of the scope of the other arguments raised by the claimant, and the time available, it was proportionate to ask the claimant to move on.

The Issues

16. The issues were recorded by Employment Judge Bedeau in the case management hearing on 23 March 2020 (RBp.28) to be as set out in the following paragraphs.

17. Did the claimant make a qualifying disclosure in accordance with section 43B ERA? The claimant relies upon a verbal disclosure made by the claimant to the respondent's CEO, Sean O'Shea, on 16 April 2019, relating to an inconsistency in the application of the respondent's policies to different grades of employees who were and would be subject to undue stress by the inconsistent application of the policies, in particular:

    a. What words did the claimant used to convey the information to Mr O'Shea?

    b. How does the claimant assert that there was "inconsistent application of the respondent's policies to different grades of employees"?

    c. How does the claimant assert that such employees would be aware of (and hence subject to "undue stress" by) such alleged inconsistency?

    d. Did the claimant hold a reasonable belief that the information disclosed tended to show that the health and safety of any individual has been, or is likely to be endangered pursuant to section 43B(d) ERA?

    e. What is the identity of the individual whose health and safety was being, or was likely to be, endangered as of 16 April 2019?

f. Did the claimant have a reasonable belief that the information disclosed was in the public interest?

18. If the Tribunal determines that the information disclosed amounted to a protected disclosure, was the reason, or principal reason, for the dismissal that the claimant made the protected disclosure?

19. If the claimant's dismissal was not automatically unfair pursuant to section 103 ERA, what was the reason, or principal reason, for the claimant's dismissal? The respondent asserts that the claimant was dismissed for some other substantial reason of a kind as to justify the dismissal of an employee holding the position which the employee held, namely the mutual and irredeemable diminution of trust and confidence between the claimant and the respondent. This is hereafter referred to as SOSR.

20. If the claimant was dismissed for SOSR, did the respondent, in the circumstances, act reasonably or unreasonably in treating it as a sufficient reason for dismissing the claimant?

21. Did the respondent adopt a fair procedure in dismissing the claimant?

22. Did the respondent unreasonably failed to follow ACAS Code of Practice, section 207A(2)(B) TULR(C)A 1992? It is now accepted that the ACAS Code does not apply, in terms, to dismissals for SOSR and therefore that, if I accept that genuinely to have been the reason, I do not need to consider this issue.

23. Employment Judge Bedeau also set out issues relevant to remedy. It was agreed at the start of the hearing before me that liability would be determined in the first instance and, depending upon the outcome of the liability judgement, a further case management orders made in relation to remedy in order that those issues might be determined at a subsequent hearing which was provisionally listed for 28 May 2021.

24. Following the conclusion of all of the evidence in the case but before submissions, the claimant withdrew the claim of automatically unfair dismissal on grounds of protected disclosure contrary to s.103A of the ERA by email dated 16 December 2020. I dismissed that claim on withdrawal on 23 December 2020. It is therefore not necessary for me to decide the issues set out in paragraphs 17 and 18 above.

25. The particular matters which the claimant argued needed to be considered in relation to the issue of whether the decision to dismiss was fair or unfair were the following:

a. The claimant argued that the real reason for dismissal was not an alleged irredeemable diminution of trust and confidence in him because that was inconsistent with the level of trust which had been displayed in him by the respondent that he would do his job.

b. He did not accept that the situation was irretrievable and argued, in essence, that a lesser sanction should have been imposed.

c. He argued that he could have been given a chance instead of being placed on gardening leave which confirmed the impression that the situation was irretrievable.

d. He was never going to get a fair hearing as the decision to dismiss was pre-determined.

e. The respondent had not taken sufficient account of his mental health.

f. The decision maker at the dismissal stage had not taken evidence from relevant witnesses.

g. Relevant information had been withheld from him. The claimant explained in his closing submissions that this referred to a failure by DH to answer his questions about how the document at RB p.417 had come into being despite a request from him on 13 May 2019 (RB p.427). He also said that he had not got answers to backstories created to cover gaps such as the availability of the original documents in the Colleague G case.

h. The decision makers had not taken account of the opinions of others on the subject of whether there was a breakdown in the relationship between the claimant and his employer.

i. The decision makers had ignored relevant evidence. There was also some evidence from the claimant that he had not been able to access relevant emails in order to find all of the evidence which he wanted to rely upon.

j. The decision had, in fact, been about misconduct dressed up as SOSR which had not justified dismissal rather than some other sanction.

k. Many documents which he had sought to include in the hearing bundle had been left out by the respondent and I should draw adverse inferences from that.

26. For their part, the respondent argued that the claimant had developed a "deep-rooted distrust and negative attitude" over a period of time (see para.6 of the RSA). They relied upon the following particular matters:

a. Events in 2014 and 2015 involving JC;

b. An alleged belief on the part of the claimant that a number of employees (including managers) were involved in a plot against him and that some had acted in bad faith;

c. Allegations concerning the claimant's conduct at an event in November 2018 which is referred to as the first Drum event;

d. What the respondent alleges to have been the claimant's belief about the actions of managers in relation to the disciplinary action in respect of Colleague G, for whom the claimant acted as a workplace colleague;

e. Allegations concerning the claimant's conduct at the second Drum event in May 2019.

Relevant Law

27. Once the Employment Tribunal has decided that there was a dismissal, or if, as in the present case, dismissal is admitted, they must consider whether it was fair or unfair in accordance with s.98 of the Employment Rights Act 1996 (hereafter referred to as the ERA).

"Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

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

(b) Relates to the conduct of the employee,

(c) Is that the employee was redundant, or

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

(3) In subsection (2)(a)—

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

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

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

28. In the present case, the respondent argues that dismissal was due to a breakdown of trust and confidence but, more specifically, a breakdown in the relationship between him and senior management which manifested itself in the claimant's negativity towards and mistrust of them. The respondent argues that it falls within s.98(1)(b) ERA 1996, commonly referred to as "some other substantial reason" or SOSR. In the alternative, the respondent relies upon conduct but, in reality, the conduct alleged against the claimant in the present case was not such as to justify dismissal as a first step, even with notice.

29. An example of a case in which the Employment Tribunal decided that a dismissal because of a fundamental breakdown of trust and confidence was the reason for dismissal is Ezsias v North Glamorgan NHS Trust [2011] I.R.L.R. 550 EAT. The EAT in Ezsias warned Tribunals about the risk that employers are using the concept of SOSR as a pretext to conceal the real reason and of the distinction between dismissing an employee for conduct which caused a breakdown in working relationships and dismissing them because those relationships had broken down. In McFarlane v Relate Avon Ltd [2010] ICR 507 EAT the then President of the EAT described referring to trust and confidence in this context as unhelpful and said that it was more helpful to focus on the employee's specific conduct. Similarly, in Perkin v St George's Healthcare NHS Trust [2006] ICR 617, the CA held that an employee's personality could not be a potentially fair reason for dismissal, but that personality could manifest itself in ways which caused a breakdown in relationships which actually or potentially damaged the employer's operations and that could amount to SOSR.

30. If I conclude that the reason for dismissal was that the employer genuinely believed that the relationship between the claimant and the company and/or its senior management had broken down and could not be retrieved, I need to go on to consider whether the decision to dismiss for that reason was fair or unfair in all the circumstances. The reason or reasons for the breakdown in the relationship can be relevant to the reasonableness of a decision to dismiss the claimant because of that breakdown. That is consistent with the broad view to be taken by the Tribunal of whether a decision to dismiss was fair or unfair in all the circumstances: Board of Governors of Tubbenden Primary School v Sylvester (UKEAT/0527/11). In Sylvester, the employer had failed to warn the employee of the risk of continuing in her behaviour.

31. The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) does not apply to a dismissal for some other substantial reason: Phoenix House Ltd v Stockman [2017] ICR 84 EAT. However, the employer must still follow a process which is fair in all the circumstances and

elements of the Code were capable of being applied. In this, it seems to me that the guidance in J Sainsbury plc v Hitt [2003] ICR 111 (CA) that the range of reasonable responses test applies as much to the investigation carried out by the respondent as it does to the reasonableness of the decision to dismiss is of assistance.

32. For example, in Stockman, the claimant had "never had the opportunity to demonstrate in practice that she could work harmoniously with [the person who had beaten her to a particular role]." The claimant in Stockman had been absent from work from the moment that the relevant incidents occurred. The approach to the principles to be applied when considering the procedure and the applicability of the code were said by the EAT (in paragraph 21) in that case to be that:

> "Certain of its provisions, such as for example investigation, may not be of full effect in any event in such a dismissal. What is required when a dismissal on that ground is in contemplation is that the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee holding the position that she does cannot be re-incorporated into the workforce without unacceptable disruption. That is likely to involve, as here, a careful exploration by the decision maker, …, of the employee's state of mind and future intentions judged against the background of what has happened. Of course, it would be unfair, as it was found to be here to a marginal extent by the tribunal, to take into account matters that were not fully vented between decision maker and employee at the time that the decision was to be made. Ordinary commonsense fairness requires that. Clearly, elements of the code are capable of being, and should be, applied, for example giving the employee the opportunity to demonstrate that she can fit back into the workplace without undue disruption,"

33. In Stockman, the EAT upheld a finding by the Employment Tribunal that a dismissal was unfair, given that the claimant was unlikely to be brought into day-to-day contact with those with whom she had a difficult working relationship and that the employer had wrongly put the responsibility on her to show that the relationship had not broken down irretrievably. That latter had demonstrated a partly closed mind (see para.16 of the EAT judgment at [2017] ICR 84).

Findings of Fact

34. The standard of proof that I apply when making my findings of fact is that of the balance of probabilities. Where it was necessary to resolve conflicting factual accounts, I have done so by making a judgment about the credibility or otherwise of the witnesses I have heard based upon their overall consistency and the consistency of accounts given on different occasions compared with contemporaneous documents, where they exist.

35. It can be seen that the hearing involved evidence about events going back a number of years. I have set the factual matters which were particularly relied upon by the parties out in paragraphs 25 and 26 because it is these matters upon which I have focussed in making my decision and in these reasons. However, I took into account all of the evidence presented to me, both documentary and oral. I do not record all of the evidence in these

reasons but only my principle findings of fact, those necessary to enable me to reach conclusions on the remaining issues.

Background

36. Not only was the claimant a long-serving employee of the respondent, but he and SH, the Managing Director, were childhood friends. SH was the claimant's best man at his first wedding and the claimant was SH's best man and is godfather to his daughter.

37. The claimant started work with the respondent on 26 June 2007 as a bus driver. He was promoted to the role of Garage Administration Supervisor at the Edgware Garage and then in 2009 was transferred back to Potters Bar Garage. In 2012 he successfully applied for the role of Acting Operation (Support) Manager and went to West Perivale Garage where he reported to DH for a short period until the latter was seconded to oversee the respondent's operations in relation to the London 2012 Olympic Games.

38. The claimant is very critical in his statement about what he saw of DH's performance in his role, both when he worked alongside him and later, when the claimant returned to West Perivale in the role of Operation Support Manager and was then appointed to the role on a permanent basis. Whether his criticisms are justified is not something upon which I need to reach a conclusion, but the claimant seems to have been left with the opinion that some individuals' shortcomings were unfairly ignored (see C's statement para.5, for example) whereas others' were the subject of disciplinary action. See his paragraph 15 where he describes what he considers to have been a fair outcome to an investigation into his own administrative oversight. I can see from DH's own statement that he considers that there is a different likely cause for the claimant's resentment towards him. Whatever the true cause I accept that the claimant has a very low opinion of DH which came out clearly in the hearing before FOJ (see page 559 where he said that he has been resentful of DH throughout his career and DH statement para.12).

39. It is a feature of the respondent's business that Operations (Support) Managers or OSMs (like the claimant) and Garage Managers (or GMs, to whom the OSM reports) are frequently transferred between garages. For example, when the claimant was at West Perivale the GM was first SB and then he was transferred to Willesden and YD replaced him. The claimant reported to YD for a while and was then transferred to Holloway Garage in 2013 when he reported to ID, who was the GM there at the time. The claimant accepted that, in most cases, this was for development of the manager in question.

40. I note that the terms Operations (Support) Managers and Operations Managers are used interchangeably. I use the abbreviation OSM rather than OM, which appears frequently in the paperwork.

Colleague A's disciplinary and grievance

41. Although Colleague A is one of those who it has been agreed should be anonymised, it is relevant and it has been openly discussed that she was, until July 2015, the claimant's partner and is now his wife. She is employed by the respondent as a Garage Administration Supervisor. She was the subject of disciplinary action in 2014 when she was demoted from OSM and given a final written warning (RBp.54 is the invitation to the investigation meeting and RBp.55 the invitation to the disciplinary hearing, the outcome is at RB p.75). The claimant acted as her workplace colleague at the disciplinary meeting (RBp.69). Without going into detail of the underlying facts, which were not in dispute, it is clear to me that the misconduct was sufficiently serious that summary dismissal was an option open to the decision maker, There was no appeal against the lesser sanction of a 12 months final written warning imposed taking into account the mitigation argued on behalf of Colleague A.

42. Colleague A's manager at the time of the incident, and her GM, was JC. Colleague A then brought a grievance in which she raised a number of complaints, including that on her own appointment she had received insufficient support from JC and that she had been treated differently in relation to the above disciplinary compared with others who had committed comparable misconduct offences. Colleague A's grievance was heard by TA and the outcome letter is at RBp.102. Overall, the allegations of victimisation and unequal treatment of her by JC were found to be unfounded and the grievance was rejected. Concern was expressed by TA (at page 107) that Colleague A had alleged there was a culture of fear and bullying within the Operations Division of the respondent but had "*put forward no evidence to support*" the serious allegations. TA expressed concerns that those allegations were "*made as an attempt to deflect blame for your own incapability and fraudulent act*.".

43. The claimant had acted as his wife's workplace colleague for the grievance. The above concerns were put to him and it was argued that it showed a change of attitude from remorse at the disciplinary hearing (in order to avoid dismissal) to an attack in the grievance to seek to divert blame from Colleague A to JC. The claimant denied the allegations saying that following the disciplinary matters had come to light which they had mentioned at the grievance.

44. Additionally, the grievance officer, TA, expressed concern that he had received information during a disciplinary he had conducted in the course of his own employment as OSM which he had shared with his wife in breach of the Code of Business Conduct. TA was sufficiently concerned that she wrote to SH, then Operations Director, to express her concerns that the claimant

    "*may lack the professionalism required required to carry out an OSM role. In particular, he appears to lack the ability to separate his personal interests from his professional judgment*." (RBp.100)

45. The claimant draws attention in his witness statement (para.26) to s.12 of the Employment Relations Act 1999 (the EReA 1999) which provides

protection from detriment or dismissal for workers exercising their right to be accompanied at a workplace meeting and workers who carry out the role of companion. I accept unreservedly that he would have had that right in relation to his role as his wife's companion at the grievance meeting on 9 September 2014. However, that was not, as I read TA's letter of concern at RBp.100, the reason why she wrote to SH which was, on the face of it, as set out in the above quotation.

46. The relevance of Colleague A's disciplinary and subsequent grievance, is that the respondent alleges it to be the origin of an unjustified sense of grievance on the part of the claimant towards JC. I do not need to reach a conclusion on whether or not there was a change of position on the part of the claimant or his wife between the disciplinary in March 2014 and the grievance hearing in early September 2014. However she did make allegations of being undermined by JC within her grievance which were investigated by TA.

The claimant's 2015 disciplinary

47. The claimant's unchallenged evidence (paragraph 27 of his statement) was that in December 2014 he was tasked with deciding what the disciplinary sanction should be for a customer assistant who had left his post at the rear of a bus. His decision that there should be a written warning was appealed and the appeal was heard by JC who upheld the appeal and substituted the claimant's decision for a lesser sanction.

48. The claimant's own GM at that time was ID. The claimant understood that SH had instructed that feedback from any appeal would be sent directly to the disciplining manager; in this case directly from JC to the claimant. JC sent her feedback via ID which the claimant did not receive until ID returned from leave.

49. ID made a file note of the conversation he had with the claimant on 24 December 2014 (RBp.112). ID sets out in that file note that the claimant had expressed frustration with his decision being overturned and asked why JC had not contacted him direct. ID explained that his understanding was that the process was for feedback to come via the "home" GM (i.e. himself) and they then discussed the reasons for the reduction of sanction on appeal, focussing upon the employee's assertion about lack of training and the likely competency of the Trade Union rep at appeal level. ID told the claimant that, although he would not himself have allowed the appeal, JC's decision had to be accepted.

50. I can understand the frustrations of a diligent manager who has made a decision in a disciplinary matter in good faith but whose judgment was overturned on appeal. The claimant strikes me as being diligent and thorough and that is not merely my impression from his evidence that is the evidence of those who managed him: ID described him as "*proficient, well-organised and pro-active maanger who generally performed to a very good standard*". He accepted the general proposition that an employee has the right to appeal against a disciplinary outcome with which they do not agree

and if the appeal manager, exercising their own judgment, decides to overturn the first instance manager that should not necessarily be viewed as a personal criticism of them.

51. The claimant's response was to email JC (RBp.110) in terms which he describes as making "*some observations in the form of questions*". This was copied to ID and SH. He contradicts ID's evidence that he "*advised Geoff not to email Jacqui*" as is recorded in the first paragraph of RBp.112. His evidence was that "*no conversation had mentioned an email at all*".

52. ID's oral evidence was "*I advised you after our discussion, I advised you not to email JC. That was friendly advice*". He accepted that the first he had known of the email was when it had landed in his inbox and repeated the the claimant had said that he wanted to email JC and he, ID, had advised him not to. He had been prompted to write the file note when he had seen the email which I conclude means that his first reaction to reading it was that the email would trigger something which meant that he needed to have an aide memoire of the conversation which had preceded it.

53. Although the claimant denied telling ID that he was going to email JC and being advised not to, he certainly recalled being advised by ID to "*leave it*". It is clear that by writing the email at RBp.110 the claimant was not following that advice even if it was not expressed in terms of an instruction not to send an email. It led to a complaint by JC against the claimant (RBp.113). The following matters stand out from the email:

    a. In the first paragraph the claimant said that he had previously described the practice of feedback from an appeal GM being passed to the OSM through their own GM as going "*behind someone's back*" and "*a shoddy way of doing business*". Although he does not in some many words accuse JC of going behind his back and going about things in a "*shoddy way*" it is a clear implication from the words which he uses. That is after ID has explained to him that his own understanding of the practice is contrary to the claimant's which should have caused the claimant to pause before making such accusations against someone who, in all probability, was following what they believed to be the correct practice.

    b. He set out 16 questions which are quite confrontational in tone, given that he is directing his missive to a GM.

    c. He concluded with a number of sentences in which he raises and dismisses possible explanations for JC's decision to reduce the sanction including "*I am absolutely sure that you would not let the personal situation between us affect your professionalism and put the company and its contracts at risk*."

54. Although the claimant denied, when it was put to him that this last comment was sarcastic, he also gave very frank evidence that he felt that JC had reduced the sanction because "*it was me and in doing so put the company*

at risk". The reason he felt that the company was put at risk was that he considered it to be a serious health & safety risk if the customer assistant moved away from the back of the bus, given a then recent incident in which a passenger had fallen from the open rear door of a new Routemaster and suffered life-changing injuries.

55. I do not doubt the claimant's sincerity about the reason why he considered the incident to be serious. However, it was insulting to JC to write in terms which, even obliquely, suggested that she had taken action which was unprofessional and put the company at risk because of her personal views of the claimant. She correctly identified that in her complaint when she said "*I deem Mr Seer's email to be personal and believe the motivation is far beyond the outcome of this specific appeal*".

56. Nevertheless, as the claimant said, he paid the price for that because following disciplinary hearings on 22 April 2015 (RBp.135), 1 May 2015 (when the hearing reconvened with GT as the claimant's workplace colleague RBp.138) and 1 June 2015 (RBp.152) a final written warning was imposed (RBp.155). At the time of the final meeting the claimant accepted that he should not have sent the email with the benefit of hindsight and said that he did not intend to offend JC. It is fair to say that the first meeting was some considerable time after the email had been sent.

57. The claimant gave evidence that he had been informed by ML that ID had telephone him and told him to administer a final written warning. It was suggested by Mr Brown that the claimant would have included that in the letter of appeal had that been the case. This was denied by ID. In general, I found ID to give straightforward and succinct evidence consistent with the contemporaneous documentation. Whatever the claimant may have been told by ML, I accept that ID did not direct the outcome in the 2015 disciplinary. However the claimant believed at the time that he had done so.

58. The claimant appealed the decision and the appeal was heard by BMcW who confirmed the decision (RBp.160). He noted that the apology to the hearing manager had not been matched with a meaningful apology to JC.

59. Having listened to the claimant's evidence about this incident, nearly 6 years after the email had been sent, on the one hand he said "*it took six months to resolve and I've paid the price for it. I shouldn't have done it. It was six years ago and I haven't repeated it*." He accepted, as he did in the meeting on 1 June 2015, that his behaviour towards JC 22 April 2015 had been wrong. On the other hand, in oral evidence he said that JC had been "*clearly angling for a disciplinary action*". In the 1 May 2015 hearing he said that she had "*chosen to be offended*" (RBp.141). He is plainly suspicious that the written notes of BMcW from the appeal hearing are said by the respondent to be no longer available. My conclusion is that the claimant still considers that JC's decision was personal and it still rankles with him because he complained that he has still not had answers "*to this day*".

60. In his July 2015 appeal outcome, BMcW picked up on the letter which TA had written to SH in October 2014 (paragraphs 44 above) and

recommended that mediation with JC and a referral to EAP should take place. According to ID (ID's para.6) mediation was arranged in order to rebuilt relationships between the claimant and JC and also with himself. He agreed to that, but was unaware of the nature of the claimant's issues with himself.

61. The reference to EAP led to consideration of whether the claimant had depression (see email from the claimant to BMcW on 13 July 2015 RBp.163) which seems to have led to the mediation being postponed and picked up again by BMcW in April 2016 (RBp.162).

62. In the meantime, the claimant had, in error, signed an authorisation for a payment in lieu of notice to be made to an individual who had been summarily dismissed and was therefore not entitled to such a payment. The claimant frankly accepts that he was in the wrong although he explained that he signed something that had been prepared by someone else. He states that he felt terrible about not having counterchecked the paperwork (see his paragraphs 42 & 43). Since at the time he was on a final written warning, disciplinary action could have resulted in dismissal, but ID decided not to take disciplinary action. According to the claimant, he asked SH whether he had had any involvement and the response had been that ID had wanted to take him through the disciplinary process, but SH's response had been that "*if you do, you're going to lose a good manager*." This action by SH and ID is inconsistent with a pre-determination at that date to engineer the claimant's dismissal or to plot against him in some way.

63. The claimant, in his witness statement outlines incidents in late 2016 which he relies upon as indicating an attitude towards himself (but not only himself) on the part of senior management. He explained in his paragraph 50 that he joined a working group with the aim of improving the working environment at Metroline.

64. At a meeting with senior figures in the company, SOS stated that he was willing to speak to anyone who had any concerns. The claimant took him up on that offer and he and three colleagues were invited to a meeting. According to SOS (para.4) this was in approximately June 2016. His recollection was that he had been surprised that more than one person was there although the claimant recalled an invitation being sent to all 4 attendees.

65. It seems as though, based upon the claimant's recollection, the employees may have expressed the view that on occasions employees were set up to fail and that SOS denied that (claimant para.52). On the face of it, this was an unremarkable exchange.

66. I reject the claimant's evidence that SOS said in front of witnesses that the respondent would sometimes dismiss someone and pay what it takes at Tribunal, if, as I understand it to be, the implication is that SOS admitted that the company sometimes dismiss people regardless of an expectation that the result will be a successful Tribunal claim. I considered SOS to have a balanced and considered approach to responding to the claimant's

questions and to be doing his best to give a complete answer. His evidence was that a consequence of people taking the company to the Employment Tribunal was that they may have to pay if they were found to be wrong. He said that they would not "*shy away from making the decision*" but the consequence may be that they would have to pay if staff were judged to have done wrong. He did not recollect using the words alleged but it had been more in the context of being supportive of OSMs who made the right decision at the time for the right reasons; the company would support them and if they had to pay at the Tribunal as a result the company would learn from it. I accept this evidence. It is consistent with other evidence given by DB, FOJ and the claimant about the purpose of the case review meetings.

67. The claimant's perception of the consequences of his meeting with SOS in about June 2016 are set out in his paragraph 54. He says that it "*led to an amount of caution that is reflected in the email chain at pages 167-169*", especially in light of a colleague's suspension. These emails are relied upon by the respondent as indicating growing suspicion on the part of the claimant. One chain arose when he was deputising for Colleague D, his then GM and ID, by then Deputy Operations Director, asked for the regular financial report. The claimant wrote to ID on 23 June 2016 "*I still haven't had your assurance that there will be no detriment to me if the report isn't up to standard. Without this I am reluctant to submit.*"

68. Reassurance was provided, but the claimant's evidence to me suggests that the reason why he sought that reassurance was that he believed that someone, possibly ID, was looking for a reason to criticise him. In other words, that – at that time - the claimant had an elevated level of suspicion that he was being targeted. ID accepted that he had been aware that the claimant and colleagues had had a meeting with SOS but he considered matters to be "*business as usual*". His evidence, which I accept, was that he understood the claimant's apprehension about the request for a brief report in the absence of Colleague D, who was on leave, but was only asking for elements which he expected would have been provided by the OSM to the GM in any event. It is clear that, at the time, ID mailed the claimant to say "*There will be no come back should report be lacking details that I would normally expect a GM to include*." This was consistent with ID's oral evidence, which I therefore accept, that he had not been asking for anything unusual and was not seeking to find fault.

69. SH's reaction when ID sent him a copy of the claimant's request for reassurance (RBp.167) was to ask ID to meet with the claimant to try to understand his comments because he was concerned that "*some form of deep rooted suspicion is present*".

70. In July 2016, the claimant "*began to hear rumours of a plot to discredit me to the extent that I would face disciplinary action and almost certain dismissal*". He recounted an event in his paragraph 55 which SOS referred to as being a meeting with the OSMs in which, according to the claimant, SOS stated that the reason for the suspension of the colleague who had accompanied him to the meeting referred to in paragraph 64 above was genuine and not the fact of the meeting. SOS did not dispute that that

comment had been made, if that was the claimant's recollection but denied that he would have approached the claimant to make the comment spontaneously. That the comment was made but in the context of a wider conversation seems probable, given SOS's evidence, which I accept, that he is very happy for people to bring him things "*that are not going so well*".

71. The contemporaneous emails suggest that the rumours he was hearing affected the claimant's confidence in the respondent (see the emails from the claimant to SOS between 25 and 28 July 2019 RBp.172). They arrived shortly before a period of SOS's leave but he accepts that he did not reply to those emails. In the last of the three emails, the claimant apologised for "*being be (sic) so cryptic, it is hard to strike the balance between protecting oneself and making unfounded allegations*." In fact, the claimant does not make any allegations in those emails but merely talks about an expectation of "*further movements detrimental to me*". The second paragraph on RBp.177 appears to explain more about the claimant's thinking behind the emails to himself and to SOS.

72. The only "*movements detrimental to me*" the claimant gives evidence about in the months immediately following are the overturning on appeal of a decision which he had made in relation to Colleague E by YD (claimant's statement para.56). No action detrimental to the claimant appears to be related by him in late 2016. Indeed, he describes a disciplinary matter where he was a workplace colleague and BMcW handled the hearing in a way which "*marked a turning point in our relationship*." In his paragraph 58 he says that "*eventually the fear of being framed receded and I continued with my role, …*".

73. These two incidents – described in his own words by the claimant – do lead me to reflect that the claimant took personally both decisions which overturned his ruling (as with the JC decision in 2014 and the YD decision in 2016) and where his representation has been successful (as with BMcW). He seems to consider that decisions which either agree or disagree with an action of his in a professional capacity are meant personally and this seems to affect the working relationship between him and his colleagues. When the claimant was cross-examined about what he thought at the time in relation to the Colleague E appeal he said that he had been told by LW to "*watch you back*" and by others what the appeal outcome would be, so set down in emails to himself recording what he regards as predictions about the outcome. He agreed with the suggestion by Mr Brown that what he was suspecting was that the decision would be made cynically in bad faith, essentially because it was his decision. When it was suggested to him that this indicated that at the time (mid-2016) he was losing trust in the senior management the claimant's response was "*I had tried by going to [SOS] to build trust and the exact opposite had happened*." In fact it seems to me that the claimant is seeing a pattern in unrelated incidents which is not supported by evidence.

<u>The claimant's 2017 grievance</u>

74. One point of detail in the evidence concerned Colleague L who had been on a performance improvement plan. The claimant was his workplace colleague. On 9 January 2017, ID sent an email (RBpp.174 – 175) in which he said that "*as part of our internal development of Operation Managers*," a particular colleague would "*continue his training alongside [Colleague L*]". The claimant argues that he reasonably concluded from this that Colleague L was no longer at risk of dismissal because of conduct issues since he would be training someone else. He put to ID that it was disingenuous to suggest to the wide circulation list of that email that the particular colleague would train with Colleague L. ID responded that the garage in question was budgeted for 2 OSMs and there had been an opportunity to send the individual to learn the role alongside Colleague L; there had been no hidden agenda. His email had been to inform people of where people were located.

75. Colleague L left the business in March 2017; the claimant's account of the circumstances is at his paragraph 60. I accept that the claimant regarded and still regards this 9 January 2017 email as being disingenuous – hence his question to ID. However, in the circumstances of the large number of personnel changes announced by the email, the distribution list to which it was sent and the confidential nature of performance management process I am of the view that ID's email was perfectly proper and to do otherwise risked being seen to pre-empt the performance process. For the claimant to regard the email (and the writer) as disingenuous was an unreasonable conclusion to reach.

76. The claimant was, by then, reporting to LW whom the claimant "*considered to be a good friend*" (GS para.49). The claimant considered that LW was passing on unjustified criticism from ID. He describes in his paragraphs 65 to 67 that LW was talking of a plot against him, the claimant, and he himself felt under pressure because of the decision he had made in the case of Colleague F. According to the claimant, LW suggested that the latter commit his views to paper which he did on 22 November 2017. The claimant then regards this as having "*backfired*" because he was taken to have raised a grievance. ID's evidence about the alleged criticism which the claimant considered he was receiving is in his paragraphs 12 & 13. One mentioned in particular concerns a discussion that the claimant apparently had with LW to the effect that he had conducted a higher than average number of disciplinaries. ID comments with hindsight that the claimant's perception that this was a criticism was internalised by him rather than him raising his concerns directly with LW or ID.

77. The email which he sent to LW is at RBp.176 with an attachment at p.177. In the email the claimant describes feeling under a massive amount of pressure facing a never ending stream of criticism. The attachment explains that he considered himself as having been accused of collusion in relation to a 2016 decision which was removed at appeal and feared the same allegation in relation to his handling of Colleague F's case. There was then a further email at RBp.176A dated 29 November 2017 in which the claimant mails LW, refers to earlier advice from the latter to "*laugh it off*" and

explains that he had wanted to get something that had been "*bugging*" him for a long time off his chest and that the accompanying email was a general gripe but had not intended to be a grievance.

78. The claimant's evidence is that LW was present in his office when he sent the second email to LW at RBp.177A and that CCTV footage demonstrates this to have been the case. However, the claimant goes further than this, he alleges that LW directed him to write that email and advised him to leave in a particular sentence that "*The only way the events of summer 2016 will ever resurface is if I find myself facing the company in a tribunal – a situation I hope never arises."*

79. On the one hand the email of 29 November 2017 clearly states that the claimant did not want this to be taken as a formal grievance. On the other hand, the first email (RBp.176) talks about the claimant

"*feeling under a massive amount of pressure … never ending stream of criticism … constant barbs from above, even when … I do much more than my colleagues. … we are well into harassment territory*."

80. This strikes me as an expression of an individual under considerable strain. The claimant's explanation for writing it was that he had done so at the request of LW "*so he could sort it out … I wanted to say – got an idea about a plot please let me get on with my job*."

81. The claimant did not accept the proposition that no reasonable employer would have ignored his email or failed to investigate. My view is that, while some employers might, in practice, accept the second email as a withdrawal of the grievance, they would be taking a risk that they would subsequently be found to have ignored warning signs of stress at work and criticised for not investigating, despite the request for it to be dealt with informally. My view on that is not affected by whether or not LW was present in the office when the second email was sent or, indeed, by whether LW advised the emails to be sent. The claimant's evidence was that both represented his views at the time; his discontentment is with the decision to treat the first as a formal grievance.

82. The claimant's explanation for what he believed was going to happen when he wrote the first email on 22 November 2017 was that LW was going to suggest that ID left him alone. He contacted ACAS to ask whether it was reasonable for the company to take it as a grievance even if he withdrew it and did not want it to be a formal process and they advise him, on balance, to attend the grievance meeting (RBp.178). He seemed to consider that some of what he has to say might be a protected disclosure (hence the reference to seeking a meeting with SOS) but in the end attended the grievance meeting which took place on 13 December 2017 and was conducted by LW. The outcome is at RBp.212.

83. As a result of the grievance, an occupational health referral was made (RBp.206). This led to an abnormal heart rhythm and high blood pressure being detected and the claimant being signed off sick. The occupational

health physician recommended that, because of the stressful nature of his work, he should be off work entirely while that was investigated. There was no concern about any psychiatric condition.

84. LW found no evidence that any allegations of collusion had been levelled towards the claimant, nor evidence of harassment. He pointed out that in his role it was inevitable that employees would have the right to raise grievances against the claimant if they were aggrieved with his decisions. He advised the claimant to bring any concerns to him in the future "*immediately they come to light*" rather than gathering information over an extended period of time.

85. Unfortunately, the process seems to have been detrimental to the claimant's trust in LW whom he described as undergoing a "*complete change from a person who was a good friend to hostile to me. Possibly he was going to find what I said malicious and therefore start disciplinary action afterwards*." He seems to doubt that the outcome letter at RBp.212 was authored by LW.

86. The claimant appealed the grievance outcome. His view was that LW's outcome letter did not reflect what was spoken about in the grievance meeting (see the details set out in RB pages 220 to 229).

Relevant events of 2018 - 2019

87. The appeal was conducted by AH on 6 February 2018. At that hearing AH started by exploring how to get the claimant back to work, subject to the treatment of his heart condition. He asked the claimant about his relationship with LW (RBp.230). The claimant said to AH that it would be awkward if he were placed back into a garage with LW;

"*I just feel he has gone from being supportive and on my side to totally the opposite. I feel some of these things are pretty much about how do we get rid of him (GS) – how do we?"*

88. Reading the notes of that hearing on 6 February 2018, they read to me as though AH was trying to get to the heart of the reasons for the claimant's concerns and feelings of unease. The immediate outcome was that the claimant was moved to Cricklewood garage which, he explains in his paragraph 79, he enjoyed. He had a double by-pass heart surgery in April 2018 and returned to work in mid-June 2018.

89. AH went and spoke to a number of managers when looking into the claimant's concerns. This included SOS whom he asked about the emails at RBpp.170 to 172 (see RBp.240). I note that SOS records that, in late 2017, the claimant withdrew his request to make a disclosure (this was during the currency of the first stage grievance investigation) and also SOS's statement that "*at all times I kept my communication with Geoff private as I was no aware of the specific issues that he was intending to bring to my attention."* I accept that this is SOS's practice and that this confirms AH's evidence in his para.6 in which he states that SOS declined to discuss with AH his private conversations with the claimant.

90. I have read the notes of the meetings between the claimant and AH in detail. His conclusion go beyond a finding that there was no evidence of collusion or adverse treatment of the claimant. He seeks to understand how the situation might have arisen from the claimant's perspective and accepts the consistency of the claimant's perception. He advises raising matters of concern straight away so that the manager knows. He advises against the claimant becoming a spokesperson for his peer group as it "*adds more stress and is a burden on your shoulders*." (RBp.255). It is fair to say that the claimant denied that that had happened.

91. Overall, AH's feedback from the people he had spoken to about the claimant, which her reported to the claimant in the outcome meeting on 20 February 2021, was that;

"*they all hold you in high regard. They have sympathetic concerns in relation to your wellbeing. They want to see you back at work and thrive in the role. Even though there was some people who have had allegations thrown their way. Nobody has suggested that these are vexatious and should be investigated separately. … the things that were coming back were more of concern in regard to your than any criticism.*" RBp.256.

92. Later that year, the claimant's wife raised a grievance about the handling of her request for a transfer. The first stage grievance was conducted by FOJ. At an appeal against FOJ's decision before NF the claimant acted as her workplace companion. The outcome letter is at RBp.300. NF had only joined the company a few months previously. It is not necessary for me to go into the subject matter of the grievance in detail but it was clear to me from the claimant's description in oral evidence before me of his views of the grievance appeal outcome that he did not end up with a high opinion of NF.

"*I was very disappointed with [NF]. If he had come up with reasons that were unarguable that would be different. I had a great deal of hope that [NF] was going the change the atmosphere within the company. In my first meetings with him he was very very pleasant – a nice man. [but he was] just another [manager] towing the party line*."

93. It is also clear to me from the cross-examination of NF by the claimant that he was dissatisfied with the way NF handled matters. In particular, he is of the view that his conclusion that FOJ's tone was not offensive (point 3 on RBp.302) was inconsistent with the approach of ML to the JC complaint against him in 2015 in which it had been said that "*the only arbiter of what is offensive or unacceptable is the person to whom the correspondence was directed*". It seems to me that the two situations are not comparable. ML had concluded that he would have been offended had he received the email (point 1 on RBp.155). NF concluded that he did not find the tone to be offensive and accepted that FOJ had not intended to offend but said that he was sorry if the claimant's wife was hurt by the advice given.

94. On 9 October 2018 there was a (so-called) one-to-one meeting between NF, ID (by now the two regional or area operations directors), SH (MD) and

the claimant as part of a series of meetings between the senior management and the OSMs. The structure of the organisation at this time is at RBp.37FF. It shows that ID had 5 GM direct reports (including the claimant's then GM, DB) and NF had 4 GM direct reports.

95. This meeting was described in NF's statement and also in SH's. The notes suggest that the claimant stated that the OSMs were "*scared to say anything*" that there was a "*dictatorial style of management*" and some GMs were not taking responsibility for poor performing OMs. The meeting was reconvened a month later when the claimant denied saying that the management were dictatorial and said he was happy in his role. He did volunteer the information that there were some OSMs who he sees as "*seeming gets protection*." In cross-examination the claimant accepted that that conversation took place and that he might have said those words or words to that effect. According to the notes, the claimant also said that there was "*still an issue with one GM on trust*" – by that, the claimant made a clear reference to the reduction of a written warning to a formal oral warning in 2014 by JC. I consider that, in this, the claimant is speaking of having suffered an injustice in relation to a workplace decision, years previously, when the context included that he then committed an act of misconduct which he appears to accept was a misjudgment.

96. The first Drum event took place on 23 November 2018 (so called because it was held at The Drum, Wembley). The meeting was between management and union representatives from all areas of the business. The claimant had not seen that the dress code was casual and was embarrassed to attend in work clothes. He accepted that the stated purpose of the meeting was to build relationships between management and the Trade Unions. I note, also, SH's evidence about the purpose and importance of the event at his para.67. The claimant regarded himself as having a good relationship with the Union representatives with whom he dealt.

97. He accepts that he was disengaged at the meeting. The respondent's witnesses who attended the meeting described the claimant's behaviour as "*disappointing*", making it "*very clear*" with his body language that he was not a "*willing participant*" (SH para.68). The claimant accepted that he had approached SH at the lectern during a break. According to SH, he told the claimant that if he didn't want to be there he should go home. The claimant's recollection was that SH asked him to stay. Either way, the claimant did stay. According to the claimant, he said that "*one of the issues was that it was clear that [OSMs] and GMs were clearly treated differently*" and SH replied that it was different for the GMs.

98. Pausing there, I do not see that that is, necessarily, controversial. GMs are a level of management higher than OSMs; it is not unusual for different levels of management to have different priorities and objectives and axiomatic that they have different responsibilities. Those are matters which can lead to differences of opinion between levels of management and the appearance of different treatment.

99. SH's evidence was that the claimant openly questioned whether the company lived up to its core values and cast doubt on the honesty and integrity of senior managers. The claimant's recollection was that this happened after lunch and that he had told SH that he would speak his mind. The relevant matter is that he accepts that he made those challenges openly. NF said that the claimant "*behaved very unprofessionally and demonstrated a highly negative attitude*" (para.10). DH also gave evidence about the comments that there was a lack of honesty and integrity among senior managers (DH para.21).

100. He suggested to DB in cross-examination that this did not undermine the purpose of the meeting because the trade union representatives had applauded him. DB had been asked by SH to speak to the claimant about his behaviour at the first Drum event. DB's own evidence was that it was,

    "*perceived as an attack by management on management. Union officials referred back to it subsequently and to an extent it had had the effect of undermining the purpose of the day, which was to improve the relationship between the parties*." (DB para.7)

101. DB's evidence was that the tone showed disunity rather than,

    "*that we were not two teams one against one another; that there were cracks in the organisation … management should show unity in purpose of an improved relationship and not internal fights*".

102. His view was that SH was quite clearly the target of the attack at a personal level and that the incident did not "quite" amount to a disciplinary matter (DB para.8). That SH was the target was challenged in cross-examination by the claimant, but DB was clear that that had been his perception. It also seems to have been Mr Hill's view that disciplinary action was inappropriate (see DH para.23) but that the claimant's behaviour was concerning as it went deeper than lack of enthusiasm.

103. I found DB's perception to be valuable as a somewhat objective viewpoint of the seriousness of the claimant's behaviour because, in general, the impression I received, even through cross-examination, was that he and the claimant had a relatively easy, mutually respectful relationship. I found his evidence to be credible in general: DB gave his evidence with clarity and frankness about what he recalled and what he did not. Where he expressed opinions, he was clear about the reasons for them.

104. According to the claimant, DB spoke to him on the next working day after the first Drum event and explained that his (i.e. DB's) perspective was that the claimant's intervention had been a personal attack on SH. The claimant denied this but DB's intervention should have made him realise how his statements and behaviour had been perceived. It also appears that DB questioned the claimant about the contrast between his "*work ethic and high standards*" and "*apparent attitude towards senior management*".

105. This comment highlights the feature which has been an underlying theme of the case. There has been no criticism whatever of the claimant's work; indeed his thoroughness and abilities in executing the role of OSM have been attested to by a number of the witnesses, including Mr Leathem the former colleague who provided a statement in support of the claimant.

106. On 20 December 2018, the claimant's wife was given a written warning following a failure in following the respondent's lost property procedure. The claimant's evidence about this was that, in the strictest sense the decision was fair and that was the view of his wife as well: she had not appealed against that sanction. However, a grievance was submitted on 5 April 2019 because of the "thoroughly unsatisfactory manner" in which it had been handled (see claimant para.90 and RBp.363). This grievance is very critical of the actions of a number of individuals involved in the suspension of the claimant's wife and alleges breach of confidentiality. Colleague A accepted that she had omitted to "book in" the item of lost property. The grievance was treated as an appeal which the claimant appears to regard as a breach of policy by the respondent because it was outside the timescales for an appeal. My view is that it is acceptable for an employer not to be hidebound by the strict form of a complaint by an employee; what is key is that the issues raised should be promptly, fairly and proportionately investigated.

107. The next incident of note involves the disciplinary action against Colleague G, an OSM. A report was made by Colleague K (a driver) and his Unite representative, Colleague J, to another OSM that Colleague G had offered to reduce the sanction he had given Colleague K at a disciplinary from a written to oral warning if they waited until after the relevant internal audit. This was escalated to the relevant GM, JC, who told DB about it (see DB statement para.5). A decision was taken, after consultation with the respondent's employment lawyer, not to intervene but to review the paperwork after the internal review had taken place. I note that, according to DB, JC was "*very sceptical*" that Colleague G would carry out the alleged intended deception.

108. Again according to DB, JC took a copy of Colleague K's disciplinary paperwork and reviewed it after the audit when she discovered that the original written warning had been replaced with an oral warning (DB statement para.6).

109. The claimant's account of this matter appears in his application for interim relief (RB p.628). Colleague G was an OSM who had joined the respondent upon the takeover of another company. He asked the claimant to be his workplace colleague. When the claimant reviewed Colleague G's paperwork two things became apparent to him,

    "*firstly, that [Colleague G] had committed the act he was to be charged with but secondly that his colleague and other members of senior management had been aware that this was intention, and did nothing to prevent it.*"

110. It seems to me that the claimant identified very closely with the interests of those whom he represents which, no doubt, meant they felt supported.

However, he does not seem to have been able to see that the perspective of the senior managers took in a broader range of interests than the perspective of Colleague G.

111. DB explained that the dilemma when management were told of the offer to change the sanction was that they could have spoken to Colleague G about the allegation before the audit but that a credible denial might then lead to an investigation of Colleagues J and K for making a malicious allegation (and at the time the GMs were sceptical that Colleague G would commit the misconduct). The alternative was to see what happened. It does not seem to me to have been wrong of the managers to choose the latter of the two unpalatable alternatives: either had potentially difficult consequences but the course they chose was the more likely to put them in a position of judging whether the allegation was probably true based upon more than one person's word against another. My view is that the managers did not have a particular obligation to Colleague G to prevent him from acting dishonestly; any defence that he had not known his actions to be dishonest could be raised squarely within any disciplinary procedure. JC's actions in taking a copy of the original paperwork was not entrapment; it was just good sense (see her explanation at RB p.365A).

112. The first stage decision in relation to Colleague G was that he should be summarily dismissed, although he was subsequently reinstated on appeal a decision which the claimant later described as "*the correct decision to come to*" (RBp.630). The appeal was dated 20 March 2019 (RBp.382 to 390) and there was also a grievance raised on 11 March 2019 (RBp.380). Colleague G later told NF that he had been surprised to find a lot of things had happened in his absence on leave prior to the first stage hearing. I have not given weight to that. The claimant claims to have texts showing that colleague G was informed and consented to his actions during the latters' period of leave.

113. What is clear is that the claimant offered to correspond on Colleague G's behalf and so was more than merely a companion at the meeting. Colleague G stated to FOJ that he had put in his grievance on the claimant's advice (RB p.568). The claimant considers that there are unanswered questions about this case which seem to concern the wording of correspondence sent to him by AD who was the first instance decision maker (see RB p.366). She explained to FOJ that her involvement in the case had ceased by that point and that she had been concerned about what she could say when communicating with a workplace colleague when she did not have permission from the employee (RB p.579). This was a reasonable position to take.

114. The claimant's view, notwithstanding that he accepted that Colleague G had committed gross misconduct, was that the disciplinary process was not being applied fairly or equally and that that was a matter which needed to be drawn to the attention of SOS under the disclosure policy. His view was that management treatment of Colleague G in not stepping in before he substituted the warning was bullying (see claimant's para.94). This appears to be on the basis that the fellow OSM to whom Colleagues J and

K had turned, had been aware that Colleague G "*was about to make [a] mistake and did nothing to prevent it*" (RBp.380 in the grievance of Colleague G of 11 March 2019).

115. His view of Colleague G's case led him to send an email to SOS on 19 March 2019 (RBp.381) saying that he,

"*would like to bring an issue to your attention under the terms of the disclosure policy. I cannot raise this matter with my manager as it seems that some of his superiors are involved.*

I have recently been involved in a process that was rotten from its conception. I have clear, documented evidence of this. The claim in the first paragraph of the disclosure policy re honesty and integrity rings very hollow. The assertion that we expect all staff to maintain high standards leaves me even more incredulous after my recent experiences.

I believe my concerns come under the remit of this policy as the general public need to be aware that when they apply for jobs within Metroline the policies and procedures mean nothing and that collusion from all grade from OM to OD inclusive is possible. Being the subject oft his treatment could not help but impact on a person's health."

116. This mail led to a meeting on 16 April 2019 which is the subject of a handwritten note by SOS (RBp.406). He explains his account of that meeting, expanding upon that note, in his paragraphs 8 and 9 and noted that the claimant had concerns that colleagues had gone behind the back of Colleague G and that the notetaker rather than LW, the disciplinary officer, had read out the summary. He also mentioned his concern that withholding information had been a breach of the bullying policy. SOS accepted that he had not prioritised investigating this report which, in his paragraph 10, he put down to Colleague G having been reinstated on appeal and the circumstances being so specific and unlikely to recur as well as the absence of complaint from Colleague G about his treatment. SOS accepted that by 3 May 2019, the date of the second Drum event, he had not got back to the claimant with a response nor had he updated him with a potential date by which his investigations would be complete. In the end, SOS's response came on 21 August 2019 (RBp.623). SOS acknowledged the undue delay in that response but denied that it was connected with receipt by the company the previous day of the claimant's application for interim relief.

117. SOS accepted the claimant's evidence (Claimant's para.103) that he had said at the meeting that it "*looked like the company were attempting to get rid of*" managers who, like Colleague G, had come from the company which had been bought out by the respondent. He explained that he had said that because it was something he had been aware of himself that a number of managers who had joined from that company were no longer with the respondent. It was suggested by the claimant that this was to do with better contractual pay and holidays and a need on the part of the respondent to cut costs. This was denied by SOS. There was no need for me to reach a conclusion about the respondent's treatment of other managers because

the issue in the present case is whether the reason for the claimant's treatment was connected with the concerns he raised rather than the alleged breakdown in trust and confidence.

118. I accept SOS's evidence about those to whom he communicated the details of his conversation with the claimant on 16 April 2019 (see AH statement paras.13 to 15) which was that he did not discuss it with SH but did talk to DH and the employment lawyer, HN. This was mirrored by SH's firm denials in cross-examination that SOS had discussed any confidences with him or disclosed the email of 19 March or meeting of 16 April with him. I also note DH's statement para.34. I accept that evidence.

119. In the meantime, SH had, by mid-March 2019, concluded that the claimant should be offered an exit package to see whether he wanted to leave on his own terms,

"*as it seemed to me that he was deeply unhappy at Metroline and we appeared to be reaching a position where he was too distrustful of too many senior management colleagues for the relationship to be sustained and was so overtly negative that he was causing unrest among his peers*." (SH para.74)

120. SH's evidence was that he and SOS agreed to ask AH to speak to the claimant about *"ongoing issues with what appeared to be his disengagement with*" the respondent (AH para.17). It was suggested to DH that there had been no approach following the first, November, Drum meeting but when he was involved with Colleague G this had lead to the AH discussion. DH's response was that there had been the issue in November, they could see that the claimant was unhappy about Colleague G (he clarified that to be himself, SH, ID and the legal advisor, HN) and did not want the repetition of events at the upcoming second Drum event. I conclude this to mean that it was not that the claimant was shining a light on particular practices arising out of Colleague G's disciplinary so much as concern that the claimant regarded the Colleague G incident, unjustifiably, as another illustration of inequality of treatment and lack of integrity which led management to suggest that AH discuss with the claimant whether there was an issue or he might want the option of a consensual termination of employment.

121. This meeting took place on 29 March 2019 and was noted in a file note (RBp.399). The covering email is at CB page C1. The claimant suggested to SOS that he was a recipient of the file note at RB p.399. He said that he had not been aware that it was sent to him and when the claimant asked whether that meeting with AH had been to do with SOS, the latter denied it. There is therefore a potential conflict between the evidence of SOS and SH on this point. However, it does not seem to me to be of sufficient significance that it undermines SOS's evidence more generally. In particular, it does not affect my conclusion that SH was not told specifically about the claimant's confidential report to SOS of the circumstances of Colleague G's disciplinary.

122. AH had been authorised to put forward a settlement offer but did not, in the end, do so. The file note records AH saying that if the claimant did feel imprisoned in his employment then AH could offer him a settlement agreement to make it easier to leave but that the claimant reassured him that he wanted to continue with the respondent but "*he just wanted senior managers to act fairly and with integrity and honesty*." His assessment was that the claimant "*was healthy and relatively content in his job role but frustrated and let down by some senior managers*" but that he did not "*believe the relationship is broken but will take some work from both sides to heal*."

123. On 11 April 2019, DB spoke to the claimant and reminded him that his behaviour at the first Drum event had not been "*appropriate to his grade*" and had been viewed as a personal attack on SH. He made clear to the claimant that his contributions should be more respectful. (see file note at RB page 405 and DB statement para.10). I accept that the file note is a reasonably accurate account of that conversation.

124. In the run up to second Drum event the claimant was effectively running the Cricklewood garage (which ordinarily had a GM and three OSMs) on his own. Both DB and one of the OSMs were on leave and the other OSM was transferred to a different location, possibly because ID was not aware that that would leave the claimant the only manager for that period. I accept that the claimant had been working unusually long hours, even by his exacting standards for himself.

125. On 2 May 2019, there was a case review meeting at Cricklewood Garage to discuss a decision made by FOJ in a case that the claimant had some involvement in. The claimant had refused the invitation to the meeting but when ID arrived at the garage for the meeting and the claimant realised that a number of managers had attended for the meeting, he stayed for it despite having worked extended hours on that day. In the end, all witnesses to this meeting agreed that there was nothing remarkable about it, that it went ahead amicably and it was accepted by the respondent's witnesses that, although they may originally have thought that the claimant was upset because a decision of his had been overturned, the claimant had declined the meeting because he had had a series of long days covering for DB. ID's evidence was that at the end of the meeting the claimant accepted the decision of the panel and there was no apparent ill feeling.

126. When the claimant returned home, he was informed that his wife had received the outcome of her disciplinary appeal which he regarded as containing "*illogical conclusions*" (see claimant para.109 and RB pp.407 to 409). He referred to it in cross-examination as an "*irrational outcome*". He does not take issue with the outcome for her, however.

127. The second Drum event was on 3 May 2019 and the claimant attended in casual dress, having presumed it was the same dress code as the first Drum event (claimant para.111). The respondent's witness evidence was not so much that the claimant was dressed in casual dress as that he was dishevelled and unshaven (DH para.29 and SH para.79). I accept the

claimant's explanation that this was not deliberate; it was a combination of misunderstanding the dress code and having rosacea.

128. Although SH and DH both comment upon the failure of the claimant to stand when the motivational speaker asked those present to stand if they thought they were a decent human being, were this the sum total of the matters relied upon as showing lack of engagement on the part of the claimant, I would consider that the respondent's management had an unreasonable expectation of uniformed behaviour. However, the claimant accepted when questioned about it by FOJ that refusing to stand was a protest (see RBp.552). As such, the refusal of the claimant to take part suggests that he was deliberately setting himself apart and drawing attention to his difference.

129. It seems to me that of potentially reasonable and greater concern was what I find to have been a repeat of personally motivated questions which,

"*involved his general belief that [OSMs] and GMs are treated differently (by implication if not expressly that [OSMs] were being treated worse than GMs) and there being something of a culture of dishonesty; in particular he referenced a recent disciplinary sanction imposed on an [OSM].*"

130. In cross-examination the claimant accepted that at the second Drum meeting he suggested that GMs were not following the principles of honesty and integrity. He seems to have suggested that that OSMs were being disciplined and GMs were not – which carries a clear implication that he thought that they should have been and made no secret in oral evidence that he considered that a GM in Colleague G's case had committed a dereliction of duty. He did not accept that he had done what DB told him not to because he did not believe that he had been told "*don't speak up*". His response to the suggestion in cross examination that his actions in standing up in such a setting and making those comments had been inappropriate was,

"*I don't believe so. If you have gone to the very, very top and the person you have always regarded as an honest broker [has not responded] what do you do? What do you do?*"

131. The inference I make from this is that, in his evidence before me, the claimant regarded his interventions at the second Drum event to be justified by the lack of swift response from SOS following his 19 April 2019 meeting. It is almost as though he considers his questions to have been born of desperation.

132. I accept that his behaviour at that 3 May 2019 event was embarrassing, critical of senior management, inappropriate for the occasion, betrayed confidential information concerning Colleague G whose circumstances were described in sufficient detail for some to be able to guess at his identity and betrayed the claimant's negative view of senior management. In fact, to refer to him as having a negative view does not, in my opinion, do justice to the potential harm of an OSM saying words to the effect that there was a

culture of dishonesty among senior management. It is easy to see that that could breed discontent among other OSMs.

133. Following the second Drum event, there were discussions between SH, DH and their legal advisors (see SH statement para.86 and 87). DH describes himself as being reluctant at this point to treat the claimant's behaviour as "conduct" under the disciplinary policy – see DH para.33. I accept that the decision was made to refer the claimant to occupational health to seek to understand what was behind his behaviour and that, at this point, SH stepped back from any decisions because he identified that he was potentially in a position of conflict.

134. DH went to see the claimant on 7 May 2019 and his file note (headed "Conduct") is at RB page 412. It has been redacted to remove inadmissible without prejudice matters. The claimant was asked whether he agreed that the file note was accurate. In his statement he took issue with whether DH had mentioned mediation (last sentence of para.113). His oral evidence was that, apart from the reference to mediation it was relatively accurate. On that point, DH's evidence was that his recollection was that he mentioned mediation but may well not have offered it, although his mind was not closed to it, because,

"the ever-widening pool of senior managers who would have to be involved would have made it extremely challenging, time-consuming and expensive."

135. The claimant's perception was that heading "Conduct" was apt because the concerns had been about his conduct. DH discussed the claimant's conduct at the second Drum event with him and the claimant talked about being made to feel a prisoner, that the Executive Committee team "*keep lying*" and that "*the issue is in their hands not his*" with a reference to the Colleague G disciplinary. The claimant was put on garden leave and handed in his company phone. He accepted that DH had said that "*we don't actually want him to go and that he was the best [OSM] that we had*". The file note then continues,

"which he thanked me for saying but that all he wanted was for people to stop lying to him trying to convince him that black is white and holding him back and not try to put this on him saying he was sick, because he's not."

136. Concern was expressed about the claimant's mental health in the referral to occupational health (RBp.421 at 425). This was not the first occasion upon which events at work were feared to have impacted upon the claimant's mental health (see para.83 above, the correspondence at RBpp.162 to 166 and the observations of AH para.8). Occupational health investigations in December 2017 had ruled out psychiatric impairment but had led to the discovery of a potentially serious heart condition.

137. It can be seen by reading through RB pages 413 to 418 that SH supplied to DH his notes commenting on the claimant's behaviour at the two Drum events and his perception that the latter's behaviour had changed from happy-go-lucky to disengaged and negative. DH then incorporated those

notes into a document which was forwarded to the occupational health physician with his own notes of the meeting of 7 May 2019. The claimant is critical of this, I think because he reads it as though DH adopted another's statements. Perhaps it should have been apparent on the face of the document that it was the composite reflexions of more than one person, but the purpose was to explain the observations of those who worked with the claimant to the occupational health physician so that she would understand why management were concerned and, as such, I do not think that there is anything misleading about it.

138. The 2019 referral states (RBp.424) that "*whilst he maintains a very high standard in his work, he displays a level of anxiety and a desire for his work to be checked by his line manager*." And "*there has been a clear withdraw (sic) of engagement with the company and a negative attitude towards the company and senior management.*" The occupational health doctor described there being "*physical signs of anxiety*" but "*no evidence of a formal psychiatric disorder*". The opinion was that "*the problem appears most likely to be due to increasing workplace conflict*".

139. It was quite clear that the claimant did not in the present proceedings argue that, contrary to the occupational health report, he had been suffering from a mental health problem. He did argue that not enough investigation was done to find out whether that was the case and that sending him to the same occupational health physician before had meant that the second consultation had not been neutral. I take on board what he says but, even if the second consultation could have been more thorough, given that he does not disagree with the conclusions, I do not consider this to be a reasonable criticism of the process followed by the respondent.

140. In his questioning of some of the witnesses, the claimant sought to put together an argument that a series of events culminating in the second Drum had been orchestrated to lead to him behaving as he had and therefore to the respondent's action against him. He set out in questions of SOS the following series of events: his own 19 March 2019 email to SOS; the 29 March 2019 meeting with AH; the 11 April 2019 meeting with DB warning him to change his conduct for the second Drum event (which the claimant described as "*out of the blue*"); the outcome of his wife's grievance appeal on 2 May 2019.

141. SOS's clear evidence was that "*from where I'm sitting yes, those are all coincidences*". I have considered carefully whether SOS's evidence (and that of SH and DH) about the extent to which, to whom and when the claimant's concerns about the Colleague G process were discussed by SOS and accept that it was on the morning of 7 May 2019 as described by DH. The AH meeting to take soundings from the claimant on whether he wanted to consider an exit package was not connected with his conversations with SOS.

142. DB's meeting with the claimant on 11 April 2019 was prompted by his own concerns about the claimant's behaviour at the first Drum event. It seems that 2 May 2019 was DB's first day back from holiday prior to the second

Drum event which probably explains why he chose to meet with the claimant before he left. There is nothing to suggest that the timing of the claimant's wife's grievance outcome was targeted at the claimant. The fact of the question suggests that the claimant felt targeted, but I do not see evidence to suggest that he was being deliberately provoked into acting against his own interests as he seemed to suggest. In any event, he is an independent actor who was in a position to make his own judgment about what was appropriate conduct for the situation.

143. The claimant remained on garden leave and was certified unfit for work by his GP until 4 June 2019. He was next contacted by DH on 11 June 2019 to attend a meeting to discuss the occupational health report dated 14 May 2019. The claimant questioned why there was the delay and sought to suggest that the 11 June 2019 was a date on which SH might reasonably have been thinking of him since it was his own wedding anniversary – suggesting involvement in the process by SH. Although this was not put SH in evidence, the claimant told AH at the appeal (RB page 646) that he had sent SH a card.

144. DH's explanation that he waited until the claimant was no longer certified unfit through stress (including waiting to see whether a third MED3 would be submitted) and then arranged the meeting seems to me to be unexceptional and I accept it. I note the report by occupational health that the claimant had an irregular heartbeat (RBp.430) and the earlier history of heart problems. This seems to me to be reasonable grounds for DH's decision to back away, as he put it. The coincidence of dates is insufficient reason for me to think that SH had instigated the contact by DH.

145. The handwritten notes of the meeting of 17 June 2019 are at RB page 441 and the typed version at RB page 438. The occupational health report had ruled out a medical problem as the cause of the claimant's apparent beliefs about senior management or affecting his behaviour. Senior management (which DH again confirmed to be himself, ID and SH – advised by HN) had decided to set up a decision making panel to consider whether the claimant's relationship with the company and senior management had broken down and, following the discussion of the occupation health report and the management concerns, DH informed the claimant of that on 17 June 2019.

146. By this time, DH had received from NF the email at RB page 525 which, to put it neutrally, suggests that Colleague G's grievance about his disciplinary had been presented by him but led by his representative (the claimant). Colleague G's own explanation was that he had put the grievance in on the advice of the claimant.

147. The claimant criticised DH's actions in the meeting of 17 June 2019 with reference to an earlier request (RB page 427) for information about the contributors to the statement of concerns which had been provided to the occupational health physician (which we now know to be SH and DH himself). It seems to me that DH made a positive decision not to give the information to the claimant when he asked for it by email and in the meeting

of June 2019 but I accept that he informed the claimant that "*if it ended up in a hearing it would all be made available at that time*".

148. DH explained this at the appeal hearing when he said,

"*I said at the time I wasn't prepared to answer them as we didn't think it was in the company's interest to answer them at the time, I made the observations to the company doctor. You asked questions about who said what. I answered I don't want to at that time as it hadn't gone down that route. It may not have been beneficial at that early stage."* (RB page 676 & 677)

149. It was then suggested to DH by AH that had the doctor confirmed that there were mental health issues it might have made the situation worse by telling the claimant who had raised them, and DH agreed. I can understand that a responsible HR Manager might consider this to be one of those situations in which there was a valid reason for withholding information at that point in time.

150. The claimant was not informed of his so-called garden leave in writing. I do not consider the respondent's actions here to have been in accordance with best practice. DH referred to there being provision for garden leave in the contract and referred to it initially being "*like a medical suspension*" or that the claimant was "*off work while we investigate what's at issue*". He said that it was necessary for the claimant not to be at work because of "*concerns regarding the relationship or the underlying (medical) cause*". However, the basis of the absence following the claimant being certified fit after 3 June 2019 was not communicated to the claimant.

151. There were, apparently, without prejudice communications on 17 June 2019 which, quite properly, have not been communicated to me. What was put by the claimant to DH was that by 3 July 2019 the company was ready to move on and he accepted that.

152. Good practice is for an employer who has made a decision that the claimant should remain on garden leave pending a formal meeting to explain the basis for it and to avoid delay in completing the process. The claimant argues that he should have been given the opportunity to show that the relationship was working rather than be kept on garden leave. I consider that argument in my conclusions on whether the decision to dismiss was reasonable or unreasonable in all the circumstances.

Dismissal and Appeal

153. It was not until 26 July 2019 that the claimant was invited to a formal meeting to take place on 29 July 2019. I am quite satisfied, however, that the reason for that delay was as explained by FOJ in her second statement paras.3.c. to f.. In those circumstances the passage of time from 3 July to 26 July was not excessive.

154. In the invitation, the claimant was told that the purpose of the meeting was to discuss whether there had been an irretrievable breakdown in the relationship between the claimant and the company; that the meeting would be chaired by FOJ; that if she were to decide that the relationship between the two parties was irretrievably broken one possible outcome could be dismissal with notice for "some other substantial reason"; and that the claimant was entitled to be accompanied by a workplace colleague or trade union representative. He was invited to indicate whether there were any witnesses whom he wished to attend to give evidence.

155. DH explains in his statement paras.47 to 50 why the choice of chair was narrowed to FOJ, once the potential witnesses, those about to leave the business and those about whom the claimant was known or believed to have issues were removed from consideration. The claimant did not object to FOJ as chair.

156. The claimant suggested to SH that he had contacted DH on 22 July 2019 about the claimant's case to "*get the ball rolling again*" – SH having emailed DH on that date and forwarded RBp.307 to him (see RBp.473). The 23 July 2019 is SH's son's birthday, and it was put to him that the email at RBp.473 was prompted by thoughts of the claimant triggered by that family event and was action designed to chase DH.

157. This was denied by SH who said "*why you can link that situation to your situation is beyond me*". I tend to agree that there is no obvious reason to think that SH was prompted by the fact that it was to be his son's birthday the following day. On the contrary, the email on RB page 473 starts with "*As requested this morning …"* which suggests that DH sought the documents rather than that SH proffered them which is reason to think there was no connection with the family birthdate. Furthermore, I do not see that it assists me with the substantive point made by the claimant, which was, in essence, that SH was directing matters from behind the scenes and that the dismissal was pre-determined. My conclusion is that the date was a coincidence, and the email was a response to a request.

158. The claimant mailed FOJ on 25 July 2019 (RBp.480-481) asking for eight witnesses to be called and asked, if they were not available, for the hearing to be adjourned so that "*the whole of the evidence is heard*". Later the same evening, the claimant requested an additional three witnesses (RBp.479). At the meeting itself, after seeing the email from NF at RBp. 525, the claimant sought to call Colleague G.

159. Although the invitation letter simply states that the employee should notify the employer of the names of witnesses whom he wishes to attend to give evidence (RBp.476), FOJ took the view (as she explained orally) that it was "*for me to decide if it was appropriate to call them or not*". She explained that she had given the claimant the opportunity to write down questions to ask the witnesses. He refused to do so on the basis that it would give them the opportunity to get their story right (see FOJ second statement para.3.o.).

160. I see from FOJ's typed notes of 29 July 2019 (RB page 542 @543) that she opened the hearing by asking why the claimant had requested those witnesses. He declined to answer and asked "*who the company are*". Then he gave some information to explain what he regarded as their relevance to the process. In several cases he states that the individuals have made questionable decisions or provided contradictory or misleading information underlying the claimant's position which was that there was a lack of trust but it was not at his instigation (see top of RB page 545). FOJ did respond to the claimant's question about who the company were by stating that it meant the senior managers and directors of the company. She took an adjournment and resumed to ask the claimant to write down the questions he had for the particular witnesses and he refused to do so (RB page 547). FOJ then said that he intention was to ask the witnesses to make a statement.

161. The meeting adjourned at 4.00 pm on 29 July 2019 and resumed on 7 August 2019 after the claimant had been provided with statements from the individuals whom the claimant had sought to have called as witnesses. These statements are in the bundle at RB pages 565 to 589. That from SH was sent along with a copy of RB page 414 under cover of an email dated 5 August 2019 (RB page 574) in which he explains the note was made "*following the dreadful incident at the company event this year*".

162. FOJ was, in my view, an impressive witness. She typed the notes at page 542 as she was going along. Those starting at RB.p.527 are the typed version of the manuscript notes of the note taker: those are found at RBp.483. She was clear in her recollection and confident in her explanations about her actions.

163. I note FOJ's statement evidence (2nd statement para.3.g.) that she was mindful of the risk that telling colleagues and managers what the claimant thought about them might lead to the question of whether or not the relationship had broken down becoming a "self-fulfilling prophecy". That seems to me to have been a realistic prospect and one which it was sensible to guard against. She noted in RB page 549 just before the adjournment on 29 July 2019 that she had not called the witnesses "*because it would be an awkward encounter*" and that the claimant predicted that they would be sitting in Tribunal the following year. I accept her evidence that, based upon the claimant's behaviour on 29 July 2019, she was concerned that he wanted "*a show*". Her oral evidence was that she wanted to find out about the witnesses' relationship with the claimant and how they saw the relationship without putting words in their mouths, so left them to decide what to write.

164. Given that the enquiry was into the relationship between the claimant and senior management, this seems to me to have been a course reasonably open to FOJ. I consider that her concern that the claimant wanted, effectively, to challenge the witnesses about their actions – much has he had done in the disciplinary meeting with JC on 24 April 2015 – was a realistic and reasonable concern to have, given what the claimant had told her about the relevance of the witnesses. Although the claimant did not

accept in cross-examination that he wanted to call witnesses in order to challenge them on factual matters and suggest that they were inconsistent in certain respects that seems to me to be exactly what he did want to do.

165. FOJ accepted in cross examination that, prior to the 29 July 2019, the claimant had asked for access to his computer because he wanted to check some documents and she was unable to remember the outcome. Her recollection was that she had told him that he could have supervised access but he became upset and said "*Forget it, I'll not bother*". The claimant's recollection was that his request had been refused but FOJ was clear in her recollection that she had informed him that access needed to be supervised. This seems to me to be a reasonable request in the circumstances and the claimant's decision not to pursue his request is the probable reason why it was not explored further.

166. The claimant comes across in the minutes of 29 July 2019 as being clearly of the view that the decision was pre-determined (see, for example, RB page 548 at the top where he states that he wishes to appeal against the decision and considers that the company has no intention of seeing if "this is retrievable". FOJ clearly contradicted that (RB p.550) and I accept that she entered the process with an open mind. I have considered whether the comment from SH (see para. 161 above) that the second Drum event had been a "*dreadful incident*" was prudent and whether it adversely affected FOJ's rationale.

167. In a case considering whether an employee's conduct merited disciplinary sanction, for a manager of SH's seniority to comment upon that conduct – such as by referring to it as a dreadful incident – might risk influencing the decision maker. However, this was not such a case. In the first place, SH had been asked to contribute his recollections about relevant matters and it seems to me that a comment in the covering email that an incident was "dreadful" was unlikely to prejudice FOJ against the claimant; she was bound to take into account SH's evidence about what had actually taken place at the second Drum event and referring to it as dreadful does not add much to the description. In the second place, the issue for FOJ was whether the relationship had broken down and, if so, what to do about it. The relationship between SH and the claimant was one of the more significant relationships indicative of the relationship between the claimant and senior management as a whole so SH's view of the claimant's actions was relevant information.

168. I also consider that FOJ had the aim of not damaging the relationship with the process (see her approach to calling and questioning the witnesses). This also suggests that she was open to the prospect of the claimant remaining in employment.

169. It is not possible to accuse the claimant of lack of openness in his response to FOJ about the different members of senior management and his relationships with them. The information he provided about the reasons why he wanted to question various people (RB pages 529 to 531) was put to him by Mr Brown and he essentially accepted that his answers to FOJ

showed that he had reduced confidence in several GMs and in NF but argued that that was all the more reason why he should be able to speak to them. He argued that he had not accepted that the lack of trust was irretrievable.

170. The claimant was asked in cross-examination about a passage (RBp.532) in which he said that

"*I am quite willing to move on providing that there is some closure and that overt injustices cease. This will require some recognition from senior management which is why I have very little hope that it will be decided that the relationship is retrievable. In other words I believe that the decision, the outcome is already decided and we are currently just ticking boxes. … There has been no investigation indicating that the senior management's version of events has already been accepted without question*"

It was put to him that he was conveying that in order for him to feel he could move on, he needed admissions from the senior officers that they had done wrong. He disagreed with that and said that the "*outcome [he had wanted] from the senior officers was [to be] taken seriously, whether they agreed or not*".

171. However, I also note the following response to a question from FOJ about why he'd asked for particular witnesses (RBp.531) "*It is easier for the Company to get rid of me than to hold their hands up and take steps to ensure it doesn't happen again*."

172. The claimant also appeared to suggest at RB page 548 that the respondent had sought to manufacture grounds for a capability dismissal with "*desperate attempts to make it appear that the problem was with my mental health and not the company actions*." It is clear that, at the time, the claimant did not argue that there had been insufficient investigation of a possible mental health condition.

173. When the meeting resume on 7 August 2019, FOJ asked the claimant for his explanation of his relationship with SOS, SH, DH, ID and others.

174. The claimant's comments included the following:

a. "*I am particularly disappointed with [ID]"* as well as *"I have had an up and down relationship with [ID]".*

b. "*I am still very upset with [JC]. That hurts me to this date*."

c. "[*of JC] we had mediation, unfortunately this does not result in a thaw in our relationship as I have reasons to strongly believe she was not totally honest in the mediation*."

d. "*I had a very good relationship with [AD] … the fact remains she has supplied contradictory documents in [Colleague G's] case*."

e. He raised questions about "*the honesty and the conduct of that hearing*" conducted by LW.

f. "*Trust is a vital tool in any business and if someone loses my trust, I don't feel the need to put that trust in them again. ... I am always willing to repair damaged relationships and I have proved that in the past. I am afraid sometimes once bitten, twice shy in the case of [JC]. I really do feel I allowed myself to be bitten twice. As enough time passed to have a third go while I am willing but not in my hands*."

g. "*Closure and mediation has been suggested and I am willing for that to happen.*"

h. "*I have been resentful of DH throughout my career as an [OSM]*." (Although it should be noted that DH was completely unaware of that until he saw the minutes of the formal meetings.)

175. FOJ asked the claimant with whom he might have mediation. His answer was JC (again), and ID. He also said that he would like to discuss things with some others to clear the air and named DH. He said that he needed a response from SOS and seemed somewhat reassured by SOS's acknowledgement that a response was outstanding. However, it would reasonably have appeared to FOJ from what he said at the formal meeting that the claimant considered that there needed to be one to one meetings with all of the individuals the claimant considered that he had reduced confidence in: LW, SH, NF, and AD in addition to those already mentioned.

176. When FOJ was asked about the prospect of mediation in cross-examination, she said that her "*interpretation was that there were a lot of issues there and you were relying on others to make it right and that you were the aggrieved party*". She had concluded that the mediation with JC had not been successful. The claimant challenged that and suggested that to make that judgment based upon a single 1 hour session 5 years previously was unreasonable. She said that her conclusion had been that the claimant had reduced confidence in a lot of individuals and later said that there was not sufficient evidence that the claimant was willing to change and he didn't recognise that his own behaviour to the company and the managers was not acceptable.

177. Her further oral evidence before me was that mediation hadn't worked with JC because the claimant's issue with JC (as it came across in the formal meetings with FOJ) was the same issue he had had "*all those years ago*". She also pointed to

"*the number of people he had issues with. In the past there had been attempts to have mediation – even it were attempted with all the individuals it would not be successful because of the claimant's attitude to all these individuals.*"

178. Her clear evidence was that she did not accept that the claimant was making a genuine offer to enter into mediation. When asked whether there was anything in particular which led to that conclusion, she pointed to a passage in the minutes of 7 August 2019 on RB p.557 in which the claimant said "*I do not want to live in an angry world and be suspicious of everyone but on balance I have been given reason to feel that way*."

179. FOJ told me that she felt that the claimant was not being completely honest about how he felt when he said that he wanted to clear the air for her to make a decision that the mediation was going to work. This seems to me to have been a conclusion which was open to her on the evidence before her.

180. The claimant contrasted his treatment with that of Colleague H, an OSM who had been reinstated on appeal following an incident of violence. It does not seem to me to have been a comparable situation with his own and the decision would have been taken on the basis not only of the incident but of personal matters relevant to Colleague H. It is also an incident which does not fit the claimant's overall position which seems to be that OSM are inequitably treated compared with GMs: in relation to Colleague H he complains that an OSM is unfairly benefiting from lenient decisions of senior management. It is also an incident upon which the claimant is commenting based solely upon a video of the incident (see middle of RB p.648). I can understand from the claimant's perspective that the this seems unfair, but my conclusion is that part of the difficulty is that the claimant has not had good insight into the impact upon others of the way he talks about them and the of the way in which he has behaved. The two situations are not at all similar and comparing the outcomes does not assist me to judge whether the decision in the claimant's case was fair or unfair.

181. After an adjournment in the hearing on 7 August 2019, FOJ delivered the summary outcome which is set out on RB p.561. She concluded that the claimant's attitude at the commencement of the meeting on 29 July 2019 was quite poor and that the claimant had not been responding to her questions. She considered his attitude on 7 August 2019 to have been different and that he had said that he was willing to have mediation. She concluded that past experience suggested that there was insufficient reason to think that mediation would work. There were common themes of a good relationship turning sour and that the claimant was "*not able to accept when an individual has a difference of opinion with you*." Furthermore, that he got "*involved in other people's cases and take matters to the extreme level*". She did not consider that his statement that, had he had a response from SOS sooner his behaviour at the second Drum might have been different was logical. Her overall conclusion was that the relationship had broken down and she decided to dismiss the claimant with notice. This outcome was repeated in writing on 12 August 2019 (RB p.614).

182. SOS's substantive response to the concerns raised by the claimant at their meeting on 16 April 2019 is at RB page 623 and was dated 21 August 2019. His conclusion was that there was no conspiracy to entrap Colleague G for the reasons which he sets out in that letter.

183. The claimant appealed against the decision to dismiss and AH and AJ were appointed to hear that appeal. It took place on 3 September 2019 after the claimant's unsuccessful interim relief application hearing. The claimant did not object to the choice of AH and AJ.

184. The grounds of his appeal were: pre-determination; undue influence from Metroline director(s); dismissal was not for the stated reason; failure to carry out a fair and thorough investigation; disputed evidence; disparity of outcome in relation to the case of Colleague F (RB p.617). He requested that a number of witnesses were available (RB p.627): SOS, SH, ID, NF, JC, AD, LW, FOJ, DH. After discussion, he decided not to question FOJ.

185. The notes of the appeal hearing on 3 September 2019 are at RB page 644 and following. The claimant started by challenging whether it was possible for him to get a fair hearing given that AH and AJ were being asked to rule against their own bosses. AH responded that he reported direction to SOS and not to any of the other directors. He also stated that the hearing was not restricted by time (RB p.645).

186. AH then went through the individual grounds of appeal. He asked for clarification of "dismissal was not for the stated reason". The claimant said,

"*I feel like I hit on something with [Colleague G's] case, tried to resolve it by whistleblowing by going to see [SOS], the SOSR doesn't stand up when examined. I don't claim that I was innocent. It was a conduct issue and if you follow ACAS rules this probably wouldn't have gotten me dismissed*."

187. In relation to the question of fair investigation, the claimant said that he had not seen statements by people saying that they didn't want to work with him and had been unable to question them. He argued that there should have been a separate investigation and that FOJ did not look for the reason for any dispute or look for any alternative to dismissal. He argued that she had ignored the comment by AH on 29 March 2019 that the relationship wasn't broken but needed work. He argued that questioning and criticising people is not the same as an irretrievable breakdown.

188. AH and AJ then went through the witness whom the claimant wished to call. After consideration, they outlined a process which they intended to follow (RB page 653). It set out some investigation which they intended to carry out before resuming the following Thursday. The claimant agreed that, if they followed that process he would consider it to be a fair hearing. In particular, they intended to call SH, DH and DB in person at the adjourned hearing and for AH and AJ to ask questions of the other witnesses themselves and then see if it would be necessary for them to attend on the next occasion. The claimant did not object to this process, including when it was confirmed to him on 4 September that SH, DH and DB would be available to attend on 12 September 2019.

189. The questions which AH and AJ asked of LW and ID are set out in a record of these phone conversations at RB page 655 and following. LW said that he had no issues at all with the claimant and considered him to be the same

person as he had always been. He said that he would have no problems working with him. ID described their relationship as being on a business level and had no personal gripes. He said that he wouldn't have a problem with working with him, were he to be reinstated but that he would find it restrictive as to where he could work. He said that the claimant would not be able to work at Holloway, Potters Bar, Willesden or Harrow Weald. ID said that he was not sure about the West garages (which reported into NF) so "*maybe just Cricklewood*". AH expressed himself to be unaware of any issues with the GM at Willesden and that LW had stated that he would have no issues where upon ID said "*if both parties are happy to build on their relationship then I would have no issues*."

190. AH and AJ also spoke to FOJ and JC (RB page 666 to 668) and with AD (RB page 668). FOJ said that she would have concerns in working with the claimant in the future because of the case she had done with him and the fact that his wife works in her garage but also because of some things mentioned at the interim relief hearing. JC said that for her part the relationship between her and the claimant was not irretrievably broken and she had no issues towards him but was not sure that that was reciprocated. When asked directly if it would work if the claimant was in her garage she said that she did not think it would because of his attitude towards her (RB p.667). AD was relatively guarded saying that she was unsure whether she would be able to work with him as one of her OSM because she would have to know what else he has said about her but her relationships with OSMs were professional.

191. SOS said that he liked the claimant but "*on a business level no I couldn't work with him because of how he's conducted himself, because of things I've heard and seen him do*." RB page 670

192. The claimant sought to argue that he had only been able to ask relevant questions of the live witnesses at the appeal "*to an extent*". However, DH was questioned between 12.50 and 13.26. I can see from the notes (from RB p.675) that there are times when AH intervenes in order to give DH an opportunity to answer or to ask that the claimant frames a question. SH answered questions from 14.01 to 14.27.

193. DB answered questions from 14.37 to 14.53. When he was asked whether he would work with the claimant again he said

    "*As a person I don't have a problem with Geoff. We agree to disagree on things. I wouldn't exclude it completely. I think there has to be some thinking and talking of changing direction*."

    Reading those minutes, I do not think that the claimant was prevented from asking questions of the live witnesses in any way. The appeal hearing also heard from IY.

194. The claimant's additional information for the interim relief hearing (RB page 628) was relied upon by him at the appeal. I particularly note his arguments about the timing which he considers to be significant (at page 639),

"I act as a workplace colleague in February and March 2019. The day after the conclusion of the case I am spoken to with regard to a settlement agreement. I make a protected disclosure in April, no response is forthcoming. I attend a conference in may where I make remarks that show I haven't forgotten the issue, and I am put on gardening leave the next day."

195. The appeal outcome was delivered on 16 September 2019 (RB page 695). The appeal was rejected for reasons set out in those minutes and confirmed in the outcome letter dated 19 September 2019 at RB page 700.

196. AH explains his change in position from 29 March 2019 in his paragraph 43 where he referred to his previous view that the relationship could be made to work. He said that he had since had

"*the opportunity to look back into the history of [the claimant's] interactions, particularly with [JC] but also with others, and to see first-hand how [the claimant's] behaviour had been not only at times erratic but also uncompromising with long-held grudges. The situation was indeed only getting worse. Each time an issue arose involving [JC], Mr Seers went back to 2014 and appeared intent on criticising her wherever possible. We could now see that he had also developed deep issues with [SH] and [SOS]. While it was true that he did not work directly with them, they are the MD and CEO*." AH para.43.

197. I understand this to be a combination of a better understanding of the depth of the claimant's emotions towards senior management and knowledge of subsequent events. I accept that explanation because there had been much greater exploration of the history than AH had been privy to at the time of his 29 March 2019 meeting with the claimant.

198. Although in cross-examination the claimant denied that it would be difficult to find a manager for him, given the respondent's practice of moving GMs and OSMs to different garage, I accept that that was a genuine and reasonable concern. Of the 9 GMs listed on RB page 590, there were three whom the claimant said were available but accepted that they would need to be spoken to. That is without considering matters such as geographical location and that the claimant had been sighted at a garage with more than one OSM. He claimed to rely upon LW's statement that he was able to work with the claimant (RB page 655) but the claimant's own views of LW were extremely uncomplimentary because he doubted whether he had authored at least one disciplinary outcome letter which bore his name. This did not bode well for a mutually respectful and productive relationship.

199. I accept FOJ's evidence on this point when asked why the claimant could not be returned to Cricklewood. She said that that was,

"*one garage. It was not appropriate you only work in one garage [you should be able to work] across all garages. There were concerns about several managers across Metroline. Managers can be moved at any time based on business need. I don't recall issues with DB at that time but there*

were several other garages. It should have been able to transfer him but that was not possible."

I understood that to refer both to a possible transfer of DB and of the claimant.

200. Overall, the claimant was willing to concur with the suggestion that the relationship was badly damaged but "*not irretrievably, not by any means*". This was his own view. Having heard him cross-examine the respondent's senior managers I accept the truth of an observation of FOJ that

"*quite often the claimant did not accept he came across as negative and didn't understand the view of him as being negative*."

201. As to mediation, AH's view was that the claimant was "*rarely, if ever*," capable of moving on once he had perceived there had been an issue between him and another manager which caused him to conclude that mediation was not a solution (AH para.44). AJ did not specifically address mediation in his statement but convincingly explains his developing conclusion that "*it became increasingly difficult, as the hearing went on, … to imagine how [the claimant] could return to work for Metroline*." (AJ: paragraph 10)

Conclusions on the Issues

202. I now set out my conclusions on the issues, applying the law as set out above to the facts which I have found. I do not repeat all of the facts here since that would add unnecessarily to the length of the judgment, but I have them all in mind in reaching these conclusions.

203. Following the withdrawal of the claim of automatic unfair dismissal, the first question which I need to decide is whether the reason or principal reason for the claimant's dismissal was the mutual and irredeemable diminution of trust and confidence between the claimant and the respondent, and whether that was the potentially fair reason of SOSR. This requires me to consider the reason or reasons why FOJ decided to dismiss and why AH and AJ upheld that decision on appeal, and also whether they genuinely believed that the relationship between the claimant and senior management had broken down and could not be retrieved.

204. The claimant took a point about whether the relationship between him and the company had broken down or whether it was the relationship between him and senior management. Given the seniority of the individuals who are covered by the term "senior management" (SOS, SH, ID, NF) it is a distinction without a difference in the present case. However, it seems to me that the term senior management or senior management team is probably more accurate. Although the letter of invitation refers to relationship with the company, I am clear that FOJ, AH and AJ were concerned with the relationships between the claimant on the one hand and the senior management (including middle levels of management by whom

he might reasonably have been managed) on the other and that that was made clear to the claimant.

205. The claimant has sought to argue that the timing of various actions show links between them. He has argued that the true reason was that he had "hit upon something" in relation to the process involving Colleague G and his outspoken (but in his opinion justified) views about senior management. He argues that SH was in the background, involved in the process so that the outcome was pre-determined.

206. The events which the claimant attempts to link do not show targeted behaviour towards him. The reasons for my conclusion include,

    a. There was no connection between the claimant's representation of Colleague G and the meeting with AH on 29 March 2019. This was instigated by SH, DH and ID in consultation with their employment lawyer because the claimant's actions over time, in particular at the first Drum event, caused them (and SH in particular) to think that the claimant might be sufficiently unhappy in his job that he needed a way out. (see, in particular, paragraph 119 above).

    b. Although the communication to SOS on 16 April 2019 was not a protected disclosure, I have nonetheless considered whether it was the reason for the claimant's involuntary leave and/or dismissal. I am satisfied that SOS takes his obligations as the point of contact for protected disclosures extremely seriously and did not pass on that a communication of concern about the Colleague G disciplinary had been made to him in any detail. (see paragraph 118 above).

    c. In one sense the claimant's involvement with that disciplinary did lead to him being placed on gardening leave or involuntary paid leave. The claimant himself referred to it in his contributions at the second Drum event and his unhappiness with the actions of managers in relation to it was one of the matters which confirmed the view of DH and SH that the relationship between the claimant and senior management had broken down and that the problem could not be ignored. This was because the claimant was unreasonably pursuing criticism of the background to the incident despite neither he nor Colleague G himself taking issue with the decision. It seems to me to be an illustration of the claimant's inability to put things behind him.

207. This point also leads to the conclusion that it was not the claimant's conduct at the two Drum events for which he was dismissed; it was the state of affairs – the state of the relationship between the claimant and the senior management which provoked his conduct at those events that was the reason for the dismissal.

208. His suggestion that SH directed the decisions of FOJ, AH or AJ is not born out by the evidence (see, for example, paragraphs 166 & 167 above). There was no evidence of direct involvement by SH in the decision of FOJ or AH and AJ. The claimant's argument was based upon coincidence of

dates and emails which had perfectly satisfactory explanations. The explanations of FOJ for her conclusions that the relationship had broken down were full, consistent and evidence based. The explanations of AH and AJ for their conclusions were similarly ones which were evidence based. I therefore accept that they genuinely and independently came to the conclusion that the relationship between the claimant and the senior management team had broken down.

209. I have taken into account that there were a number of managers who told FOJ, AH and AJ that they would be able to work with the claimant in the future. It could be argued that it was perverse to conclude otherwise and therefore that the decisions were not genuine. However, the comments by the claimant about the managers (for example those made to FOJ set out in para.174 above) justified the decision makers' conclusions that, despite the claimant's professed view that the relationship had not broken down irretrievably, that was exactly what had happened. I particularly note AH's explanation for his change of view on whether the relationship could be retrieved set out in paragraph 196 above.

210. The decision was not inconsistent with the trust that the respondent placed in the claimant to carry out the job because there was no indication that his day-to-day work was compromised. There was no question but that the claimant was an able and competent OSM.

211. I then go on to consider whether the respondent acted reasonably or unreasonably in treating this as sufficient reason for dismissing the claimant.

212. Part of this requires me to consider whether the respondent followed a fair procedure. In the circumstances, it was open to the respondent to adopt a procedure where FOJ effectively investigated the core issue of whether the relationship was irretrievably broken and made a decision on that. The specific challenges to the procedure were that,

    a. Evidence was not taken from relevant witnesses and/or that the claimant did not have the opportunity to question them;

    b. Relevant evidence had been withheld from the claimant;

    c. The claimant had not been able to access relevant emails.

213. For reasons which I set out in paragraphs 163 to 164 above, I consider that the approach taken by FOJ to calling witnesses was one open to the reasonable employer. In any event, at the appeal hearings some key witnesses were called.

214. I have considered the claimant's argument that he should have been able to question witnesses because his position was that there was lack of trust but that it was not instigated by him. It is clear that the claimant is unwilling to accept differing views from his own about the actions of particular

managers. It is not that he has missed the opportunity to demonstrate that he has not caused the problems.

215. As explained in his closing submissions, the evidence which was said to be withheld from the claimant was first, an explanation from DH about how the document sent to the occupational health doctor had been created. In fact, DH explained his actions at the appeal hearing (see para.148 and 149 above). It is hard to understand why the claimant persists in thinking that there is something suspicious or underhand about it (see paragraph 137 above).

216. The other matter which the claimant argued had been withheld from him was information in relation to the Colleague G incident. In my view, this was not information to which he needed to have access in order to answer the questions about his relationship with senior management. It was information which the claimant wanted to have access to in order to understand to his own satisfaction every detail of the disciplinary procedure concerning Colleague G. The argument says a lot about the claimant preoccupation and does not amount to a valid criticism of the process followed by the respondent in relation to the claimant's dismissal.

217. As I say in paragraph 165 above, the approach taken by FOJ to the claimant's request for access to emails was within the range of reasonable responses, in my view. The claimant did not suggest either at the time or before me that he was prejudiced by the absence of any particular item.

218. Those specific matters apart, I am satisfied that a fair process was followed in terms of the information available to the claimant, the number of adjournments, access to representation and opportunity to state his case. The invitation letter was clear. The claimant had a fair appeal. In particular, AH and AJ outlined the process which they intended to follow and then sought and obtained confirmation from the claimant that he would consider that to be a fair process (RB p.654).

219. At times, the claimant's defence to the claim that trust and confidence had broken down between him and the respondent such that they were left with no alternative but to dismiss him seemed to be to seek to prove that his opinions and beliefs that senior managers were incompetent or duplicitous were justified. This was not merely at the Tribunal hearing but also at the internal hearings, where he talked of a lack of confidence but not at his instigation.

220. Furthermore, the claimant's position in the formal meeting came across strongly that in order for him to feel that he can move on, in order to retrieve the relationship he needed admissions from key individuals that they were wrong. The allegations of the claimant were not merely that there had been inadvertent failures but that he was the subject of a plot involving a number of individuals.

221. It is not surprising, on the basis of the information before her, that FOJ concluded that there was no such plot. It is clear from the passage I cite in

paragraph 171 above that the claimant was of the view that he was being got rid of because the company would not admit to wrongdoing. He was extremely unlikely to be persuaded that the managers had not targeted him. Indeed, he said as much to DH on 17 June 2019 (see paragraph 135 above).

222. I have seen nothing to make me think that the actions of managers such as JC, LW, ID, NF, DH and SH have personally targeted the claimant. However, I accept that the evidence shows – and showed to FOJ, AH and AJ – that this genuinely is and was the claimant's perception. It is abundantly clear that the claimant's genuinely held view at the time of his dismissal and appeal was very low of SOS, SH, DH, ID and NF as well as of a number of GMs.

223. It was suggested to the claimant in cross-examination that even if the individuals did not know the full extent of his views, it was not reasonable for them to keep in employment someone with such deep and longstanding adverse beliefs. His response was to question why SOS had not addressed it when he had the chance – AH had said that it would need effort from both sides and the implication was that the claimant did not see that the company had made that effort.

224. If this were merely a case of an employee seeking to hold management to appropriately high standards, my view would be that an employer should have been expected to accommodate that. Management cannot be above criticism. It if were simply an employer behaving inappropriately or unprofessionally at a formal event one might expect that to be dealt with as misconduct at an appropriate level.

225. The problem posed by the claimant for this respondent was that he sought to hold management to account but would not accept the explanations proffered for their actions because of his deep mistrust of senior management. Instead, in many cases objectively reasonable explanations confirmed his belief that managers lacked integrity. Then he aired those beliefs publically without apparent regard for the occasion or for the embarrassment and upset he caused.

226. Furthermore, it is difficult to see how conflict could be avoided in the future. Because of his role, the claimant would make decisions in disciplinary matters. His tendency to take personally decisions with which he disagreed made it more than likely that the list of actions which he regarded as questionable would grow. In some cases, even when he accepted an outcome, he was critical of actions taken with in the process which left him with a lingering (but not objectively reasonable) sense of injustice towards particular managers: the Colleague G case is an illustration. There was every prospect that the claimant would take on the role of workplace colleague in the future and be brought into further conflict because of the broken relationship between him and senior management.

227. The claimant argued that the respondent had assumed that the inability to repair the relationship was down to him. Whether the claimant lacks insight

or is, as was found by FOJ, not being entirely honest perhaps does not matter. The history shows a developing and corrosive mistrust between the claimant and key individuals despite attempts (notably by AH in the 2017 grievance) to reassure him. That grievance was a proper step for the respondent to take. It was a thorough investigation of the claimant's concerns of unwarranted criticism and could have been an opportunity for the claimant to clear the air and rebuild confidence in senior management. He did not, in effect, accept the outcome and continued in the belief that ID was acting against him. AH seems to me to have really tried to get to the heart of the claimant's feelings of unease and to alleviate them (see paragraph 91 above). The process was, unfortunately, detrimental to the claimant's relationship with LW.

228. As I say above, it seems to me that the respondent was unlikely to be able to persuade the claimant to modify his views. His behaviour at the second Drum event (despite DB's warning) suggests that they were unlikely to be able to persuade him to modify his behaviour. This shows that the breakdown in the relationship between the claimant and senior management was adversely affecting the company's interests. The point about the difficulty caused to the respondent because the claimant was restricted in the managers for whom he could work is, in my view, well made.

229. I have considered the question of mediation carefully. As the claimant said, it was only attempted once for 1 hour, 5 years prior to the decision to dismiss (and in relation to only one manager). In a case of a workplace relationship which is said to be irretrievably damaged, it seems to me that it would often be outside the range of reasonable responses for a respondent to dismiss without considering mediation.

230. I have found that FOJ's conclusion that mediation had not worked in relation to JC was one which was open to her. Looking at the comments made the claimant which I have recorded in paragraph 174 above, the claimant himself said that the mediation had not resulted in a thaw of their relationship because he did not believe JC to have been honest in the mediation; he identified JC as someone with whom he needed to have mediation but also said that he had been "bitten twice" by her. This is presumably a reference to the downgrading of the warning referred to in paragraph 47 above and to Colleague G's case (where JC's involvement predated the misconduct and therefore the claimant's involvement). As FOJ said, the claimant still had the same issues with JC as he had had before mediation was attempted.

231. I have also found that it was open to FOJ to conclude that the claimant was not being completely honest about his offer to enter into mediation; that he was not making a genuine offer to enter into mediation. He came across strongly as considering himself as justified in having the angry, suspicious view he had of a large number of individuals. This, it seems to me, meant that it was open to her to conclude that the claimant would not enter into mediation with the intention to resolve problems or build bridges.

232. I also take account of the fact that the claimant had negative views of a significant number of senior managers. His interaction with some individuals (such as SOS and LW) who seemed to have been trying to assist him, led to him forming negative views of them. I also remind myself of AH's evidence about his view of mediation (paragraph 201 above). Taking all that into account, the respondent's decision that further mediation should not be attempted was within the range of reasonable responses, in my opinion.

233. To the extent that the claimant separately argues that he was able to put the matter behind him and that the situation was not irretrievable, I do not think that the respondent could merely have done nothing. It is not the case that the claimant had not been warned about the behaviour which his views of senior management inspired or the impact that that had. DB had spoken to him immediately after the first Drum event and shortly before the second Drum event. It was open to the respondent to conclude that the claimant's negative view of senior management was causing real and practical problems for them and for the company.

234. The respondent took appropriate steps to investigate whether there was a health problem underlying the claimant's view of senior management. The medical advice was clear that there was no underlying problem (RB page 431). The claimant described the investigations as being "desperate attempts" on the part of the company to make it appear that the problem was not with their actions (RB p.548). Given that he did not disagree with the conclusions of the occupational health physician (see paragraph 139 above), I am of the view that the approach taken by the respondent was one open to the reasonable employer.

235. Although I have weighed in the balance the claimant's observations about documents which were not disclosed by the respondent and about documents which were only included in the bundle at his insistence, those observations have not changed my view about whether the claimant was, objectively, justified in his mistrust of senior management.

236. As I say in paragraph 152 above, good practice is for an employer to explain the basis for garden leave (or perhaps more properly called involuntary leave of absence) which in a case such as the present is a form of suspension and to avoid delay in the process. In a breakdown in relationship case, a particular reason for that is to guard against positions against the employee returning become entrenched. In the present case the claimant was put on garden leave on 7 May 2019 but I accept that that was in the nature of a medical suspension while investigations were carried out and he was, in any event, certified unfit to return to work until 3 June 2019 (RB page 436). There was a short delay until 17 June 2019 before DH met with the claimant to discuss the report which I accept was explained by DH waiting (only for about a week) in case a further MED3 was submitted. It was accepted by DH that by 3 July 2019 the company was ready to move on with convening a formal meeting. FOJ was, I accept, contacted on 11 July 2019, but was involved in another Employment

Tribunal hearing which meant that she contacted the claimant on 26 July 2019.

237. That passage of time has a reasonable explanation. Furthermore, there is no evidence that attitudes hardened against the claimant as a result. In fact, the attitudes of many of the witnesses were that they were open to working with the claimant again. However, they were, in some cases, unaware of the strength of the claimant's views and it was open to FOJ and AH/AJ to form the view that the breakdown in relationships was irretrievable notwithstanding that.

238. For all those reasons, I have concluded that the decision by the respondent to dismiss the claimant with notice for some other substantial reason, namely an irretrievable breakdown in relations between him and senior management was within the range of response open to the reasonable employer and was fair in all the circumstances.

_____
Employment Judge George

Date: …9 April 2021 ……..

Sent to the parties on:.....

.....
For the Tribunal Office