



EMPLOYMENT TRIBUNALS

Claimant: Mr Robert Gee

Respondent: John P Gee & Sons Limited

Heard at: Watford Remotely

On: 06.10.2022 and 07.10.2022

Before: Judge L Mensah

Appearance:

For the Claimant: Mr Oliver Lawrence (Counsel)

For the Respondent: Mr Roderick Moore (Counsel)

FINAL JUDGMENT

The Tribunal orders are;

1. The claim for holiday pay is made out, and was agreed by consent to be £1,657.08.
2. The claim for expenses is also made out and was agreed by consent to be £255.71.
3. The claim for Unfair Dismissal is not made out and I dismiss it.
4. The claim for Wrongful Dismissal is made out and I order the Respondent to pay the Claimant the gross sum of £3077.00, subject to the deduction of tax and national insurance.

The Background

5. This matter came before me for a two day hearing. The parties all appeared remotely. There was some late service of evidence between the parties which was agreed and meant the bundle ran to 437 pages. The Claimant gave evidence and called his wife Mrs Helen Gee as a witness. The Respondent called Mr John Michael Gee and Mrs Pamela Humphreys. I heard evidence

over the course of the two days, but there was insufficient time to hear submissions having concluded the evidence at 17.03pm on day two. I therefore ordered that written submissions were filed. Both parties filed written submissions in accordance with my directions.

6. There was also a discussion about whether it would be possible to cover liability and quantum in full within the two days. It was suggested the issue of mitigation may have to be put back to another date. It was ultimately agreed the parties would deal with both liability and quantum in full, as not to do so may have resulted in significant delay.

The Issues and Law

7. At the start of the hearing, I identified a number of potential issues in the case and asked for the parties' representatives to discuss what was in dispute. The issues were as follows:
 - 1.1 Was the Claimant an employee of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?
 - 1.2 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?
 - 1.3 If the answer to one of the above is affirmed, from what date did the Claimant commence employment with the Respondent as either an employee, or worker, and,
 - 1.4 What date did the Claimant's employment or status as a worker terminate? The definition of the effective date of termination is contained in [ERA 1996 s 97\(1\)](#).
 - 1.5 Was the claimant dismissed or did he resign?
 - 1.6 If the Claimant was dismissed was he unfairly dismissed?
 - 1.6.1 If the Claimant was dismissed, what was the reason or principal reason for dismissal?
 - 1.6.2 Was it a potentially fair reason?
 - 1.6.3 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?
 - 1.6.4 What was the reason or principal reason for dismissal? The Respondent says the reason was a substantial reason capable of justifying dismissal, namely a breakdown in the relationship.

- 1.7 If the Claimant resigned was he constructively dismissed?
 - 1.7.1 Did the Respondent do the following things:
 - 1.7.2 Did the Respondent breach the implied term of trust and confidence? The Tribunal will need to decide:
 - 1.7.2.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - 1.7.2.2 Whether it had reasonable and proper cause for doing so.
 - 1.7.2.3 Did that breach any other term of contract?
 - 1.7.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
 - 1.7.4 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
 - 1.7.5 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 1.8 Wrongful Dismissal
 - 1.8.1 What was the Claimant's notice period?
 - 1.8.2 Was the Claimant paid for that notice period?
 - 1.8.3 If not, was the Claimant guilty of gross misconduct or did the Claimant do something so serious that the Respondent was entitled to dismiss without notice? The Respondent says the Claimant had unilaterally reduced the acreage of the farm and poor management of the farm, and this was gross misconduct they rely upon for a reduction in the compensatory award. In submissions they do not advance this specifically with regard to wrongful dismissal.
- 1.9 ACAS
 - 1.9.1 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 1.9.2 Did the Respondent or the Claimant unreasonably fail to comply with it?
 - 1.9.3 Is it just and equitable to increase or decrease any award payable to the Claimant?
 - 1.9.4 By what proportion, up to 25%?

8. Mr Moore confirmed the claim for holiday pay is admitted and agreed to be £1,657.08 and the claim for expenses is also admitted and agreed at £255.71. Mr Moore accepts the Claimant's wages were £30,000 for the purposes of calculating his outstanding holiday pay.
9. Mr Moore also confirmed the Claimant was an employee, but the issue left for resolution is when the Claimant's employment commenced. The Claimant says it commenced on 14.11.1990, but the Respondent says it only commenced on the 24.10.2016.
10. As regards the end of the Claimant's employment, the parties also ask me to decide this dispute. The Claimant says his employment was terminated on the 28.09.2020 when he was removed as a Director of the company. The Respondent say the Claimant resigned in or around the 29.10.2020.
11. In terms of the law, in deciding whether the Claimant was dismissed I will have to make findings of fact after hearing the evidence. As per *Newman v Polytechnic of Wales Students Union* [\[1995\] IRLR 72](#), the effective date of termination has to be determined in a 'practical and common sense manner', having regard particularly to what the parties understood at the time of the purported dismissal.
12. Further generally the position is that summary dismissal is unambiguously communicated. This is an important general position as if such a dismissal is unambiguously communicated then any subsequent events are unlikely to alter the dismissal.
13. This type of issue is not always a simple matter and I have regard to *Kirklees Metropolitan Council v Radecki* [\[2009\] EWCA Civ 298](#), [\[2009\] IRLR 555](#), where there was a relatively messy termination without an express dismissal, but it was held that, at the latest, an employer communication stating that the Claimant was being taken off the payroll at the end of the month was sufficient to convey termination unequivocally and so to fix the date of termination. Effectively, it is a question of fact for me.
14. Where there is ambiguity, I will have to decide whether the objective observer would have understood what had been said or done as amounting to the termination of the contract of employment. There is no presumption that there has been a dismissal in the first place and the formal onus of proving a dismissal lies on the employee (*Morris v London Iron and Steel Co Ltd* [\[1988\] QB 493](#), [\[1987\] 2 All ER 496](#), [\[1987\] IRLR 182](#), CA). However, I have not been too legalistic in my approach to the burden of proof here. I have taken into account all the evidence on both sides and considered the whole of the evidence in the round before making up my mind whether there was or was not a dismissal (e.g. *Buskin v Vacutech Successors Ltd* (1977) [12 ITR 107](#), EAT).

15. Turning to the claims for unfair or constructive dismissal. The test of fairness is tied into the reason for dismissal. The size and administrative resources of the employer's undertaking are something to which the Tribunal must have regard. It can be reasonable for a large employer to do things which a very small employer could not do. When it comes to deciding fairness I remind myself of the Respondent's position in that respect.
16. The key question if applicable is whether the employer acted reasonably or unreasonably, in treating the reason as a sufficient reason to dismiss the employee. This effectively imports a "band of reasonable responses" test. It is generally an error of law for the Tribunal to decide the case on the basis of what it would have done had it been the employer. The question must be whether this employer acted in a reasonable way, given the reason for dismissal. Dismissal can be a reasonable step even if not dismissing the employee would also have been a reasonable step.

Compensation

17. What basic award is payable to the Claimant, if any?

17.1 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent? The Respondent says the Claimant committed gross misconduct by reducing the acreage of the farm and his poor management of the farm more generally.

18. If there is a compensatory award, how much should it be? The Tribunal will decide:

- i. What financial losses has the dismissal caused the Claimant?
- ii. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- iii. If not, for what period of loss should the Claimant be compensated?
- iv. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? The Respondent says the Claimant would not have continued to work for the Respondent because of the family dynamic.
- v. If so, should the Claimant's compensation be reduced? By how much?
- vi. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- vii. Did the Respondent or the Claimant unreasonably fail to comply, the Claimant did not file a grievance and the Respondent did not follow a disciplinary procedure?
- viii. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- ix. If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct? The

Respondent says it should be reduced to nil due to the same conduct regarding the acreage and the farm management.

- x. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- xi. Does the statutory cap of fifty-two weeks' pay or the maximum in the alternative apply?

Findings

19. The first issue in dispute between the parties is when the Claimant commenced employment. The background to this case is important context for my findings. The Claimant and the current Director Mr John Michael Gee are brothers. The Respondent's second witness Mrs Jeanne Pamela Humphries is their sister. The business premise is the family farm in Oxford, which had been run by their father, Mr John R Gee and prior to that with his own father Mr J W Gee. Mr J M Gee says the farm has been in family hands since around 1924. It appears from the evidence of both parties the farm had been run fairly successfully by Mr J R Gee as he brought his sons and daughter up. In the bundle, I have seen the registration of the farm as a company on the 14.11.1957 and its title being the same as it is today 'John P. Gee & Sons.' The registration shows the business was divided into 24,000 shares and shares were allocated between Mr J W Gee and I understand his son/s. This is how Mr J M Gee came to the business.
20. In a decision of the High court dated 11.06.2018, in *Gee v Gee* [2018] EWHC 1393 (Ch), Mr Justice Birss dealt with a claim for proprietary estoppels brought by Mr J M Gee against his father and brother. The Judge sets out the history, he says
 6. The farm has always been a mixed farm but the mix of work has shifted over the years. Initially the farm was a successful market gardening business growing fruit such as pears, apples, plums and tomatoes as well as vegetables and flowers, which were all picked and delivered to Oxford twice a week. That is no longer done. There has also been a flock of sheep at the farm and, over the years, a suckler herd. Nevertheless the main undertaking for some time has been (and is today) arable, mainly wheat and barley.
 7. JR started working on the farm in the mid 1950s. He has been a farmer all his adult life. JR and Pamela were married in 1956. They lived in the farmhouse at Denman's Farm itself and still do today. By the late 1970s JR was farming the farm himself with the help of about 6 employees. Aside from family members, the number of employees employed on the farm has steadily reduced over the years since that time. Three employees worked over 50 years at the farm. One employee, Ronald Carter, retired from full time work aged 65 five years ago but still works two or three days a week on the farm. At least one or perhaps two of the employees or former employees still live as tenants in farm properties.

21. The Judge records that Mr J M Gee had worked on the farm all his life until 2016. I return to that date again herein. The Judge goes on to discuss Mr Robert Gee's history,
11. After leaving school Robert took a one year Diploma in Agriculture at Cirencester. However until recently Robert's main occupation has been as a builder and property developer and he did not farm the land. There is a dispute about the extent of his involvement with the farm business. Robert is married to Helen Gee, who is a chartered accountant. Robert and Helen have two children Jack (aged 22) and Otilie (19). Jack is at university studying engineering, and Otilie is going to attend Cirencester when she leaves school. In 1990 Robert and Helen moved into the house which was the farmhouse for New Farm. That was after Evelyn Gee (JR's mother) moved out to live with JR's sister Mary Pearce. That house is just referred to as New Farm. It is also on the High Street in Cumnor across the road from Baxters.
22. It is clear to me Mr J M Gee remained working on the farm and the Claimant did explore other business interests from about 2008/9 but was living on the farm from 1990. This was a family run business and so it was in the interests of all involved to help, and in particular to help whilst their father maintained control of the business, but the Judge concluded Mr Robert Gee began managing the farm and doing the farm work on the farm after his father had transferred his shares to him in 2014. The Judge also accepted the evidence of a witness in the case,
37. He also gave evidence that since 2008/09 there had been a dramatic shift in the way the farm had been overseen, from JR to JM, whereby he had not seen JR in a professional capacity since. I accept that evidence. It does not mean JR had ceded complete control of the farm to JM but it reflects the fact that in recent years (prior to 2014) JM was overseeing more of the farming work than before.
23. Mr J M Gee does not dispute that in around 1990 he and his brother signed documents purporting to be contracts of employment. I have seen Mr J M Gee's contract dated 14.11.1990. Written over the date is the following "*Memo original Start date:-? Aug 1982.*" It is unclear who wrote this additional information and when it was added but I accept it was at the time of the contract being signed because the body of the contract shows the commencement date as August 1982 [page 54]. I have also seen the Claimant's contract dated the 19.11.1990 with the commencement date in the body of the contract being the same date as the contract. I note Mr J M Gee is identified as a Farm Worker and the Claimant as a Farm worker and Caretaker.
24. I note the year of the contract is the same year the Claimant is said to have moved back to live on the farm with his wife and this perhaps ties in with the addition of 'caretaker' in his contract.

25. Mr J R Gee was the owner of all the shares in the company bar one share which was held by his wife. The land itself was let to the company with 7/18 to Mr J R Gee, 7/18 to his wife and 4/18 to the company. It appears in November 2014 Mr J R Gee decided to transfer or gift all his shares to Mr Robert Gee and his wife gifted her one share in the company and her 7/18 in the land to Mr J M Gee. I believe this is an indicator of the differences beginning to materialise between Robert Gee and his brother John Michael Gee. This is borne out by what Mr Justice Birss says about the evidence of Mr J R Gee in the 2018 proceedings. The Judge records Mr J R Gee described being dissatisfied with the way Mr JM Gee had been running the farm, was obsessed with regard to an issue about Mr J M Gee's qualifications as a farmer and believed Mr J M Gee was a "*bad farmer*." The Judge found Robert Gee had a significant influence on his father, not undue influence, but significantly impacting on his father's view of John Michael Gee as a farmer.
26. The Judge made some significant findings about the role of the two brothers in the farm as follows,
101. As for JM's qualities as a farmer (which includes the ability to run a farm business as well as farm the land itself), it is clear that JR and JM have not always agreed about all aspects of farming but I am quite sure JR's extreme negative view today is a recent development. I am not satisfied that it has any solid foundation. JM was not alone working on the farm (there were another 5 or 6 employees when he started) but his work as a farmer has been the backbone of the farming enterprise for many years. I find that the farming enterprise would not exist today without him. I reject the idea that taking advice from an agronomist and buying products from the same source demonstrates any significant lack of competence. It seems to me that the allegations about record keeping, desiccated seed, the balance of spending on sprays and fertilisers and over-strength fertiliser have been unduly magnified. Robert's view of JM's abilities as a farmer is not reliable. In all probability the true source of JR's opinion about JM's competence today has been the criticisms of his brother aired to his father by Robert.
 102. Another contextual issue is the involvement of Robert with the farm over the years. I find that, aside from a very little work shortly after Robert finished his studies, Robert did no significant work on the farm until he started helping his father with some administrative tasks in about 2012. He took over the farm in late 2014 and it was only after that time that Robert undertook farming work (as opposed to administrative tasks).
 103. Robert described planning and building work that he did on the farm but this either predated the time he left home to make his business as a developer or was seriously exaggerated. For example while I accept Robert did do some planning work concerning the music room, it was minor. Also Robert mentioned radio masts and a loft but these were trivial matters. Moreover some of the work Robert included was effectively for his own benefit, such as work on the garage at New Farm. Relative to the work done by JM farming the farm land full time for over 30 years, those matters were all inconsequential.
27. The evidence before me repeated a similar theme to the evidence before Judge Birss, but for the fact it appears from the judgment, Judge Birss had the benefit of substantially more witness evidence and potentially more detailed

historical evidence regarding commercial aspects of the farm. I can see no good reason to depart from those findings made by Judge Birss. There is no suggestion fresh evidence has emerged that now cast doubt on those findings or justifies departure from them. I have not even been given a reassurance that I have the same evidence as Judge Birss. The accounts given by the Claimant and the Respondent appear to be, as relevant, the same information they gave to Judge Birss and I can see no proper basis to depart from those findings with regard the Claimant's level of involvement in the farm from 1990 through to 2014.

28. Mr J M Gee told me the reason his father set up those contracts was because of advice he had been given at the time regarding some sort of tax implication of his son living on a property on the farm. Given the findings made by Judge Birss, I find the Claimant was not in reality employed at the farm from 1990 and the document stated to be a contract of employment is not evidence of such a position but was devised for other reasons at the time. In other words, it did not reflect the true situation. I accept the Claimant started to help his father in around 2012, but again this appears to have been a more informal arrangement with some administrative tasks, and there is insufficiently clear evidence before me to demonstrate those tasks amounted to an employment relationship with the usual aspect of such a relationship such as mutuality of obligations. The Claimant and his representatives have not sought to argue he was a worker who then became an employee or present evidence of the same.
29. The Respondent sought to argue the Claimant was not employed in the company until 2016, when he took on the role of Managing Director. The relevant findings of Judge Birss, set out above, indicate to me that the Claimant was farming the land from 2014 onwards. This ties in, with his acquisition of all but one share in the company, and his father's shares in the land. In other words, from that point onwards he had a significant interest in the running of the farm. I am of the view Ms Helen Gee's evidence did not take this point any further.
30. I know from Judge Birss's decision, and on the evidence before me that the Claimant and Mr J M Gee both remained on the farm and working the farm until the Claimant began the process of dismissal of his brother in 2016. Clearly from 2016, Mr J M Gee had no effective role on the farm and so the Claimant was running the farm. Judge Birss was not as concerned with the level of work undertaken by the two brothers between 2014 and 2016 but the Judge did take into account Robert Gee's contribution to the business from about 2012 and his work on the farm since the end of 2014 (paragraph 147, page 255 bundle). However, the Claimant has advanced no clear picture as to what he did between 2014 and 2016 to enable me to consider whether he was employed during this time. He also advances no alternative date to the 1990 date. Standing back and taking into account all of the evidence in the

round I find the Claimant was employed from the 24.10.2016 being the year his brother was removed from the farm and the point at which the Claimant appointed himself Managing Director. The evidence is insufficient to establish an earlier date between 2014 and 2016 and I have already addressed the 1990 date above.

31. I now turn to the events leading to the ending of that employment relationship. As a result of the decision of Judge Birss, the Claimant was required to transfer his ownership of the shares back to either their father, so they could be redistributed in accordance with the Judge's findings, or some of his shares to his brother. The net result being Mr J M Gee would hold the major share (52%) in the farm because it was found this was always the intention of his father and the understanding of the family and why Mr J M Gee had dedicated such a significant amount of his working life to the farm. Unfortunately, the process did not go as one would expect and Mr J M Gee took the Claimant back to court to enforce the judgment. I again have a copy of the judgment *Gee v Gee and others* [2020] EWHC 1842 (Ch) at page 110 of the bundle. The Judge concluded,

“For all these reasons, therefore, I am satisfied that the second defendant has not been justified in withholding the completed stock transfer form from the claimant until the claimant produces a signed claim for holdover relief. That means that the second defendant has breached paragraph (3) of the order, and raises the question of the remedy for that breach. In my judgment the primary relief is to order the second defendant to deliver to the claimant within seven days a fully executed stock transfer form of 12,480 of his shares in the company. There is no difficulty about the form to be used, as the second defendant himself has already supplied copies of the draft. In my judgment he should have signed it by 24 July 2019, and should do so now without delay.

32. The judgment is dated 13.07.2020 and the shares were transferred in a remote agreement the same date (page 122). In his witness statement prepared for the proceedings before me, Mr J M Gee says that following this judgment he decided to remove the Claimant as Statutory Director and take that role on himself. He tells me this decision was due to the Claimant's poor management of the farm and his alleged refusal to negotiate renewing leases for BT and Airwaves to access mast they had installed on the premises. I also heard similar evidence from Mrs Humphries albeit not to the same level of detail as Mr J M Gee. Having heard the evidence overall, I doubt this was the real reason and it seems to me the real reason is because Mr J M Gee and Mrs Humphries knew Mr J M Gee would be unable to work with his brother on the farm in any kind of meaningful way given the litigation history and fall out between them. Mrs Humphries is clearly of the view the Claimant is in the wrong. I am satisfied Mr J M Gee had no intention of keeping the Claimant on the farm in any kind of employment and Mrs Humphries realised this. Once he became majority shareholder he sought to return to his former position of

running the farm, which he had effectively done without the Claimant's assistance for many years.

33. In order to facilitate the removal of the Claimant as formal Director of the farm, Mr J M Gee, their sister and their legal advisor organised for a general meeting to be held on the 28.09.2020. I have seen a notice of intention to remove the Claimant dated 27.08.2020 and a second notice for the meeting of the 28.09.2020. Mr J M Gee says he asked his lawyer to attend the,

meeting to support me and take the minutes, not the Company, as my relationship with Robert was non-existent at that point in time and I thought the presence of a third party would hopefully mean that the meeting wouldn't descend into a shouting match. We simply went through the required format of the meeting so that everything was carried out correctly and I was advised that we didn't need to respond to Robert's questions. We didn't want to

34. The meeting was attended by the relevant family members, including their father. The email exchanges prior to the meeting show how acrimonious the whole situation had become and how difficult it was for all involved. It is in my view the reflection of the poor state of affairs between all the siblings. I have the typed minutes of the meeting starting at page 141 of the bundle. They record the Claimant asking a series of questions and the responses from Mr J M Gee and Ms P Humphries as follows

- Why am I being removed as a director? No comment
- What are my failings or wrongdoings as a director? No comment
- Is my position redundant? No comment
- I have a substantial shareholding, should I not retain a directorship to protect this? No comment
- Was the removal of my directorship in the contemplation of the courts? No comment
- Why has JM Gee refused to sign the relevant holdover relief forms? No comment

35. The Minutes do not record the conversations between the parties but I have been provided with a transcript of a recording of the meeting commencing at page 262. There is in this case a history of the parties seeking to record conversations and interactions, with or without consent, which I have no doubt has arisen because of the lack of trust between them. I was also given a copy of the recording and asked to listen to it as the parties could not agree on the

interpretation of the recording. Once again the transcript provides clear evidence of the poor relationship. The Claimant sought to raise questions regarding hold over relief and wanted his brother and sister to tell him if they thought the court judgment had contemplated this step being taken. I have no doubt he wanted this answer as a threat to use the answer in potential future litigation. Neither Mr J M Gee nor Mrs Humphries would answer this question which he repeated several times. Their evidence is they didn't want to get into an argument and they simply wanted to get the resolution passed. After the resolution was passed and of course none of the Claimant's questions had been answered the transcript records,

“(TH) So with no further business I declare the meeting closed

(RG) uhh hang on, is there further business? Can I just clarify....so I am out now, I'm redundant.

(JW) you have been removed as a director of the company

(RG) I was the managing director. I was appointed as managing director, so it means that my job has been made redundant

(HG) have been removed, which means it is a constructive dismissal

(RG) yes

(HG) and an unfair prejudice

(RG) you had better minute it 9.22

(JW) yes

(RG) and that is clear, I just want to be ...that is clear isn't it?

(JMG?JW?) yes, I agree with that

(TH) yes, so I close the meeting at 11.20.

(RG) ok cheerio “

36. The transcript accurately records what can be heard on the recording. What isn't clear from either is whether Mr J M Gee or his lawyer replies “yes, I agree with that.” The Claimant in his witness statement does not say who gave this reply but relies upon it and the overall tenor of the conversation above to prove he was dismissed from his job on the farm at the same time he was effectively removed as a Director. He reasserts that he was a Managing Director and once he lost his role as Director he could no longer retain his position and his brother had no intention of him retaining it.
37. At the hearing it was argued for the Respondent that it was the lawyer who gave the reply, but that this was only an agreement to minute the Claimant's complaint and not to agree he was dismissed.
38. The reality is the intention of the parties isn't clear and unambiguous from the content of this single conversation and I do not believe the words recorded were used to express any clear intention. Both brothers in my view knew the removal of the Claimant as Director was the end of his working on the farm and his removal was a continuation of the lack of trust between them.

39. What I believe demonstrates the reality of the situation is that both brothers knew they would be unable to work together. Mr J M Gee and Mrs Humphries knew that by removing their brother as Director he would no longer be in charge of managing the farm. In fact, Mr J M Gee says he was removing him as a Director because of his poor management of the farm and he intended to run the farm himself. This is exactly what he did.
40. It is absolutely clear in my mind the removal of the Claimant was an inevitable end of his position of employment on the farm and the Respondent knew this was the consequence. Had they really intended for the Claimant to retain anything like his position on the farm, or even thought they could offer suitable alternative employment, I am sure they would have made that clear in a written document before the meeting. Whilst I accept once at the meeting they didn't engage with the Claimant because they didn't want an argument, this doesn't explain why they would not have made their position clear in writing in advance, particularly as the only real form of communication by this stage was the written form and they say they were seeking to avoid confrontation.
41. Mr J M Gee gave evidence saying he was looking for the Claimant to stay on in some capacity to "handover" but I find this was no more than a transfer of the assets and paperwork (as shown in reality by the letters from Thrings and the Respondent dated 28.09.2020 at page 146 and 06.10.2020 at page 151), and not any meaningful employment. I am supported in this view by the previous history and by what happened after the meeting.
42. After the meeting the two brothers have barely exchanged words but when they have, they appear to follow the same theme of destruction. They both allege inappropriate and threatening behaviour by the other. The Claimant filed a written grievance dated 29.09.2020 and in this he reasserts the loss of his employment and the lack of fair procedure. This would have been the perfect opportunity to clarify any misunderstanding of their position or to allay some of the Claimant's grievance by setting out what plans they had for retaining him on the farm with sufficient detail to enable the Claimant to understand what role was being discussed.
43. The response is a letter dated 05.10.2020 at page 148. The first thing you are struck by is the letter does not seek to dissuade the Claimant of his view of being dismissed. If this was not the real intention it is inconsistent the Respondent would not have said so here. Second, there is no instruction for the Claimant to continue in any role on the farm pending resolution or anything like a suspension on full pay. The letter says the content of the grievance will be discussed at "a future Directors meeting." The inclusion of the word "future" hardly suggests anything is even going to happen soon. It indicates some distant and yet to be determined date. I am wholly satisfied this supports my view of the real intention of the Respondent and that as far as

the Respondent was concerned they knew the Claimant's employment on the farm had been terminated.

44. The Respondent has filed an email sent by Mr J M Gee to the Claimant's wife's email. The Claimant complains this should have been sent to him and not his wife. The heading is "S111 Protected Conversation" and within the email Mr J M Gee says,

"Dear Robert,

I would like to set up a meeting between us, I suggest that you and I have a protected conversation via Zoom to discuss the farm's future, as you do not seem to be interested in working here any longer. I have had a conversation with the directors and they would like closure on the matter. I am suggesting a meeting takes place next week - you can have someone take notes at the meeting and I will also. All topics can be discussed. Please let me know if this is agreeable to you, and we can find a mutually acceptable date/time.

Yours sincerely

John Michael"

45. Mr J M Gee suggests this was his attempt to reach out to the Claimant and try and bring him back into the workplace. I simply do not agree with this evidence. It is clear and I find this was no more than an attempt by Mr J M Gee to create an inadmissible negotiation as per section 111A of the Employment Rights Act 1996. This is usually used by employers when they are trying to negotiate a termination. The language of the email is also in my view clear further support for my view that the Respondent had never intended for the Claimant to remain employed after the meeting of the 28.09.2022. It is a completely inconsistent account for Mr J M Gee to say the Claimant was no longer interested in working on the farm after the events I have detailed above. His own oral evidence to me is that he knew the Claimant would not work for him. This appears a belated attempt to seek final resolution because the Claimant was indicating he would be bringing further proceedings for unfair dismissal.
46. Whilst this is a family business the members of the family are clearly experienced litigants in terms of seeking legal advice and taking on legal proceedings. The farm is also of significant value and so I do not accept it was not reasonable for Mr J M Gee or Ms Humphries to set out in writing what the Respondent intended to happen to the Claimant's employment. I do not accept they would not have been reasonably able to tell him he still had a job and what he would be doing if that was the case. I believe the lack of written clarity in this case is because the parties all knew too well the reality.
47. The final factor I believe supports my view is the fact the Respondent did not pay the Claimant beyond the last pay slip dated 30.09.2020, which is clearly

recorded as month six and so for the pay period of September 2020. Had the Claimant been employed beyond the meeting of the 28.09.2020 then I would have expected his pay to have continued to a date more aligned to the Respondent's position (29.10.2020). I would have expected the Respondent to have notified the Claimant of his failure to attend for work and what work he was expected to do, and I would have at the very least (even given it was a family farm) have expected them to tell the Claimant in writing that the consequence of not undertaking his role (which they had failed to specify) was the loss of his wages.

48. Taking all of the evidence together, I find the Claimant was dismissed on the 28.09.2020 when the Respondent removed him as a Director and therefore as Managing Director. The manner in which he was dismissed failed to follow any fair procedure. He was not invited to a disciplinary procedure and he was not given notice. He was effectively summarily dismissed without reason being given.
49. The principle reason for his dismissal is the decision of Mr Gee to take back the running of the farm. It is argued the reason for this is the Claimant's poor management of the farm, but again the Respondent had not taken any remedial action with regard to the Claimant's performance or capability between July 2020 and his dismissal on the 28.09.2020. Both the Claimant and Mr J M Gee argue before me as to who is better able to look after the farm. No expert or independent evidence has been adduced regarding the running of the farm and very little in terms of documented assessments. I am not an expert and have no judicial knowledge of farming practices. The only things I can ascertain from both brothers are they disagree on how the farm should be run. I am not satisfied the Respondent has shown this was the real reason for the dismissal or a sufficient reason to dismiss the Claimant.
50. The Respondent argued in the alternative, the reason was a substantial reason capable of justifying dismissal, namely the breakdown in the relationship. This in my view has full merit. Given my findings above, I accept the real reason for the dismissal was the complete breakdown in the relationship between the Claimant and the other Directors (Mr J M Gee and Mrs P Humphries). This breakdown was well established in 2016 when the Claimant dismissed his brother and has only deteriorated further since then. There was no way the Claimant would have remained working on the farm in any capacity once he had lost the major shareholding. He certainly was not going to work for and under the direction of his brother. They are fundamentally and it appears sadly, irreparably opposed.
51. In the light of my findings I conclude the Claimant was dismissed from his employment on the grounds of some other substantial reason. I conclude the breakdown in the relationship did justify the dismissal but have gone on to consider at what point the dismissal was justified. The Respondent says the

Claimant had unilaterally reduced the acreage of the farm and poor management of the farm, and this was gross misconduct they rely upon for a reduction in the compensatory award. In submissions they do not advance this specifically with regard to wrongful dismissal.

52. On the basis of my findings the Respondent knew the Claimant's employment would be brought to an end when he was removed as Managing Director. In oral evidence Mr J M Gee admitted he had taken legal advice and had been told not to mention dismissal at the meeting. He was taken to a transcript of a recording said to have taken place after the meeting of the 28.09.2020 as follows,

JG You've lost

RG Sorry

JG You know you've lost.

RG Lost what?

JG You're a bad loser.

RG And that's what you're saying. And the letter? The professional part of it. The letter. The response to the letter. You're obviously a bit worried about it because you're not saying anything. Okay, well, let's have a comment on it then.

53. When it was put to Mr J M Gee that he dismissed the Claimant on the 28.09.2020 because he wanted to punish him, he replied "*No I am not a bitter twisted person I just wanted to get on farming.*" Mr J M Gee told me once the Claimant had lost control of the business he wouldn't be running the farm anymore.

54. I conclude in those circumstances the Respondent ought to have given the Claimant notice that his employment was going to be terminated on the grounds of a complete breakdown in the relationship between the now major shareholder Mr J M Gee, his sister Mrs P Humphries and the Claimant.

55. The Claimant had been working the farm since 2016 and was going to lose his employment. Taking into account the resources available to the business and clear access to legal advice, it is outside the range of reasonable responses to have dealt with the Claimant's employment in the manner they did. If they sought to avoid exacerbating an already tense and difficult situation, they failed and their actions in my view had the opposite effect.

56. In other words, I conclude no reasonable employer in the Respondent's shoes would have dealt with the Claimant as they did. I conclude the Respondent where entitled to terminate the Claimant's employment, but not summarily as they did. I have not been shown any contract of employment for the relevant period of employment. If notice was given I conclude the Claimant would have

had a further one month plus one week of employment before it had reasonably come to an end and he would have been paid that notice. I have taken into account he had three full years service by the date of termination.

57. The Respondent has argued that I should reduce any compensation to reflect the fact they say the Claimant had unilaterally reduced the acreage of the farm and poorly managed it. I have not had to consider this argument because I am satisfied the Respondent was entitled to dismiss the Claimant for some other substantial reason, but with notice, however I address it below as it is also relied upon for contributory fault. If I had had to consider what would have happened if the Respondent had taken the Claimant through a fair disciplinary procedure it would have taken the period of loss beyond the one month plus one week, I have concluded should have been given.

58. For the same reason, I conclude the Respondent did not unreasonably fail to follow the ACAS Code of practice with regard to disciplinary proceedings. The Claimant did file a grievance and this was in regard to the manner in which he was dismissed and the loss of his employment. The Respondent did not adequately address the grievance but, as per my findings, I conclude they should have given the Claimant notice. I conclude it is not just and equitable to give an increase or decrease.

59. The Respondent also argued the Claimant's award should be reduced because of his conduct. They argue any award should be reduced to nil due to the Claimant's conduct regarding the acreage and the farm management. Given my findings I conclude this has not been made out. The Respondent has not shown the farm was managed in such a way to give rise to misconduct on the part of the Claimant. I found Mr J M Gee's evidence about this weak and lacking substance. It is pleaded the Respondent discovered that,

"its fields were covered with weeds, hedges had been left uncut for several years, and a rat infestation was left unaddressed in one of its corn stores which resulted in the loss of its farm assurance, a product certification which was integral to the Respondent's saleability. 24. Further, other conduct by the Claimant caused disrepute to the Respondent's business, namely the Claimant refusing requests from BT and Airwaves to access their masts which were located on the Respondent's farm and the Claimant's refusal to negotiate a renewal of their leases which caused the two companies to threaten legal action against the Respondent. 25. In May 2020, the Claimant unlawfully appointed Ms Gee, as a statutory director and Company Secretary of the Respondent without holding a board meeting to allow the Respondent's directors to vote on the proposals."

60. The Claimant told me his view was it was not environmentally friendly to cut the hedges and he did not agree with spending money on sprays. He told me he

felt the criticism was no more than a difference of opinion. The Claimant told me the farm had rats before he took over in 2016 and didn't agree with using poison on the land. He told me he did however organise for the destruction of rats by other means.

61. In respect of BT and Airwaves, the Claimant denied the farm contained a BT mast (Mr Moore did not pursue this further in questions) and told me the dispute was with regard to an attempt by someone in a cherry picker with no licence and no health and safety records seeking to enter the farm. The Claimant told me he felt that had there been an accident on the farm the farm would have been held jointly responsible. Further. In oral evidence Mr J M Gee described this aspect of the allegation as the Claimant "just being awkward."
62. Turning to the unlawful appointment of Ms Helen Gee as a statutory Director it was suggested to the Claimant this appointment had been made without the consent of Mrs P Humphries. The Claimant argued the decision was a shareholder decision and he didn't expect it to be controversial as his wife had been acting for the company for over twenty years. He pointed out the current Respondent has tried to take his wife to a disciplinary at the Institute of Company and Commercial Accounting and it was held she had no case to answer. Mr Moore did not suggest otherwise in his questioning.
63. Overall, I am not satisfied the Respondent has shown the Claimant caused or contributed to his dismissal on the above basis. I do not reduce the Claimant's award on this basis.
64. However, the Respondent also refer to the reduction in the farm's acreage. I have read the judgment touching on this issue. The Judge records,
12. I will deal with these points in turn. The company was in fact farming the land at the time of the original litigation. The fact that that may have been a breach of the lease (if, indeed, it was not consented to or acquiesced in by the landlord) does not affect that. The court order did not interfere with the operation of the covenant, if the landlord wished to seek to rely on it. But it was still an order. In my opinion the first defendant, acting by the second defendant, in surrendering the lease, took a deliberate and, indeed, cynical step which had the effect of preventing the company from continuing to farm the land. In my judgment, there was a clear breach of the order by the first defendant in surrendering the lease.
65. So my starting point is that a previous Judge concluded the Claimant's father, acting through the Claimant, did intentionally surrender the lease. I do not agree this proves the Judge also found the Claimant acted in a deliberate and intentional way as was suggested by Mr Moore. That's is not clear in my view. The Claimant told me he was acting through a power of attorney and the decision was his father's. This appears consistent with the view taken by the Judge. He also argues the Judge did have all the evidence regarding the ability of the Respondents to have taken on the lease. He told me he and his brother did not qualify for succession rights. I have also been shown a letter

dated 02.12.2019 from the landowners chartered surveyors. They state in clear terms the lease cannot be assigned in any circumstances and the lease contained a covenant to personally farm. They make it clear their view is the lease would not have been capable of being passed to the Respondent. Beyond the documents confirming the surrender of the lease and the above, little more has been filed about this. I am not satisfied the Respondent has shown the Claimant was guilty of gross misconduct in this issue. I am also not satisfied they have shown they would have ultimately been entitled to dismiss the Claimant on this basis. I therefore conclude it is not just and equitable to reduce the Claimant's compensation. Mitigation is not relevant on my findings.

Remedy

66. In find the Claimant is entitled to his notice pay. Given the Respondent accepts the Claimant's holiday entitlement was based upon his salary at the date of termination being £30,000, I find it is reasonable to apply the same to the notice period. That equates to a gross payment of £3077.00.
67. I note the Claimant's Schedule of loss refers to £17.31 per week during his notice period. I could not ascertain what this sum was for. The schedule did not refer to the basis for the sum. If the parties are not capable of resolving this sum in accordance with my findings, I give permission for either party to refer this matter back to me for consideration on the papers. If the Tribunal do not hear from either party before the 09.01.2023, the matter will be considered resolved.

Employment Judge **Mensah**

Date 11.12.2022

JUDGMENT SENT TO THE PARTIES ON

20 December 2022

FOR THE TRIBUNAL OFFICE