



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Steven Snaith

**Respondent:** Aurorium UK Limited

**Heard at:** Newcastle (by CVP)      **On:** 22–24 September 2025

**Before:** Employment Judge Robertson (sitting alone)

**Representation**

**Claimant:** Mr L Mann, solicitor

**Respondent:** Ms R Kight, counsel

## JUDGMENT

The claimant's complaint of unfair dismissal is not well-founded and is dismissed.

## REASONS

### Introduction

1. The claimant, Steven Snaith, was employed by the respondent, Aurorium UK Limited, as its Europe Finance Director until his dismissal with pay in lieu of notice on 23 April 2024. The respondent's stated reason for dismissal was gross misconduct in the form of serious negligence in the claimant's performance of his duties leading to a loss of trust and confidence in him. This arose from events leading up to the decision of a Dutch bank, Rabobank, in March 2024 to withdraw funding from a subsidiary company of the respondent in the Netherlands. The claimant says that the dismissal was unfair within Part X of the Employment Rights Act 1996.

2. I heard the claim over three days from 22 to 24 September 2025. I reserved my decision and this is the written judgment and reasons. The claimant was represented by Mr L Mann, solicitor, who called sworn evidence from the claimant himself, Ms C Kearney (Global Financial Controller) and Mr K Windross (Senior Finance Manager). The respondent was represented by Ms R Kight, counsel, who called sworn evidence from Mr N Oyler (Director of Financial Planning and Analysis), Mr R Masureik (Operations Excellence Management Consultant) and Ms A Freeman (Global Operations Director – Speciality Solutions). I have given witnesses' job capacities (some of which have since changed or the witnesses no longer work for the respondent or its group) as they

were at the material time. I had before me a substantial agreed bundle of documents extending to 917 pages and considered such documents from it as were referred to in evidence or submissions. Page references in this decision are to the agreed bundle of documents.

## Findings of fact

3. The relevant facts are as follows. Where there has been any material conflict of evidence, I indicate at the relevant point how I have resolved it. I shall set out in some detail findings of fact about the relationship between the respondent and Rabobank and the events which preceded Rabobank's decision in March 2024 to withdraw funding. Whilst the focus is on the reasons for and fairness of the respondent's decision to dismiss the claimant, these matters provide context and explanation for some of the conclusions reached by the respondent's management in the disciplinary proceedings which resulted in the claimant's dismissal.

4. The claimant, Mr Snaith, had been employed by the respondent, Aurorium UK Limited (previously called Vertellus Specialities UK Limited) since June 2008 but became its Europe Finance Director in January 2022. The respondent is part of an American-owned chemical manufacturing group, Aurorium PPC Holdings LLC ("APH"). APH has trading companies in the United States, India, China, the United Kingdom, Belgium, the Netherlands and Austria. As Europe Finance Director, the claimant was responsible and accountable for the financial oversight and management of the companies in the United Kingdom, Belgium, Austria and the Netherlands. He reported to Carolyn Kearney, APH's Global Controller and Finance Director, and through her to Al Vandenbergh, APH's Chief Financial Officer. He had a European finance team of about 11 people reporting to him, including Keith Windross, Senior Finance Manager. His was a senior role and his salary was £90,500 per year plus benefits as at the date of dismissal.

5. The claimant had a formal written contract of employment (58-75) and job description (44-48). The job description included, relevantly, the obligation to *"manage relationships with local authorities and banks, ensuring all requests and deadlines are met efficiently, maintaining a strong relationship"* (45). The Disciplinary and Grievance Procedure applicable to him (49-57) included, as an example of gross misconduct, *"serious or repeated negligent acts in the course of employment"* (54).

6. In October 2021 the respondent acquired a company based in Austria, IM Chemicals (which post-acquisition became known as Aurorium Austria GmbH ("Aurorium Austria")). The claimant was involved in the detailed financial aspects of this transaction including due diligence. In January 2022 the respondent then acquired a Netherlands company, Polyscope Polymers (which changed its name post-acquisition to Aurorium Netherlands BV ("Aurorium Netherlands")). Because he was heavily committed to matters arising from the purchase of Aurorium Austria, the claimant had no involvement in the Netherlands acquisition. Following acquisition, Aurorium Austria and Aurorium Netherlands became part of the Europe Group for which the claimant was responsible as Europe Finance Director.

7. Following and in part as a result of these acquisitions, throughout 2022 and 2023 and into 2024 the respondent experienced what were described in evidence as *"bandwidth and resource constraints"* and significant staff shortages in its European finance function. This led in turn to high levels of staff turnover, with 33

people employed or engaged in the 11 roles in the function at various times in 2023. The claimant's workload is accepted to have become very demanding and Ms Kearney, to whom he reported, instructed him to concentrate on the preparation of statutory accounts for the companies for which he was responsible and recruitment into the finance team. However, the claimant's overall financial oversight and management responsibilities for the European businesses, including the management of relationships with banks, remained with him.

8. In 2018, four years before its acquisition by the respondent, Aurorium Netherlands (then Polyscope) had entered into a €32,500,000 Term, Factoring and Revolving Facilities Agreement with a Netherlands bank, Rabobank. This financing remained in place after the acquisition by the respondent. I have a copy of the loan agreement in the bundle (76-217, "the Rabobank Loan Agreement").

9. The Rabobank Loan Agreement included a specific covenant which prohibited loans to any other company within the group exceeding in aggregate €250,000. (For context, Polyscope was a Netherlands-based company, but as Aurorium Netherlands, it became a member of a multi-national group post-acquisition in January 2022.)

10. The claimant, who as already stated became responsible for Aurorium Netherlands as Europe Finance Director following its acquisition by the respondent in January 2022, but had not been involved in the acquisition including the due diligence, was unaware of the existence of the covenant. Although the respondent's practice was that as part of due diligence, its legal team or external advisers would provide a summary of any material documents or obligations entered into by the company being acquired, no such summary was provided for the Rabobank Loan Agreement. No witness was able to explain to me why this was so.

11. The claimant received a copy of the Rabobank Loan Agreement in February 2022. He did not read it or seek advice on it or on the terms of the Rabobank financing. Because of his other commitments at the time, he delegated day-to-day handling of the relationship with Rabobank to Mr Windross. Mr Windross had no experience of managing a banking relationship. Aurorium Netherlands' local Finance Manager, Luc Cobbens, was on sick leave in early 2022 and ultimately was dismissed without returning to work.

12. Between October 2023 and January 2024, Aurorium Netherlands made three inter-company loans to Aurorium Austria to assist with cashflow. These were made under the terms of a loan agreement dated 1 November 2023 between the two companies permitting loans up to €15,000,000 (221-225). The amount transferred was €7,800,000.

13. It is common ground that these loans breached the covenant in the Rabobank Loan Agreement. They were made without the knowledge or agreement of Rabobank at the time. Neither the claimant, nor Mr Windross, who reported to him, nor his senior managers Ms Kearney and Mr Vandenberg, all of whom were involved in the arrangements for the inter-company loans, were aware that the loans were not permitted under the Rabobank financing. Although lawyers drew up the inter-company loan agreement, it does not appear that they advised, or were asked to advise, on whether the loans were permitted under the financing arrangements with Rabobank. The respondent's witnesses suggested in evidence to me that that would not be the lawyers' function. The claimant did not investigate, or seek advice on, whether anything in the finance arrangements

with Rabobank might impact on the inter-company loans.

14. As already mentioned, the claimant delegated the day-to-day management of the relationship with Rabobank to Mr Windross. Mr Windross was unaware of the lending covenant, and the claimant did not suggest or instruct him that he should seek advice on the lending terms. The claimant did not advise senior management that the loans should not be made as they would breach the covenant; this was because he did not know of the existence of the covenant.

15. Mr Windross met Rabobank regularly and provided quarterly financial reports and loan compliance certificates. It was accepted during the disciplinary proceedings that this accorded with Rabobank's specific requirements. He also copied all emails to and from Rabobank to the claimant (including those relating to the discussions with Rabobank about renewal of the financing from mid-2023, although the claimant was involved in those negotiations from time to time in any event).

16. 2023 was a difficult year for the chemicals industry, including Aurorium globally. The claimant accepts (and accepted, for example, in his appeal hearing with Ms Freeman) that he knew from management information provided to him that 2023 would not be a good year for the group. Until 13 January 2024, neither the claimant nor Mr Windross informed or warned Rabobank about conditions in the industry or the effect on the group's financial position. On 13 January 2024, Mr Windross informed the bank at a meeting that results for 2023 had been poor but early signs were that 2024 would be better. As a Dutch bank, Rabobank was mostly concerned with the performance of Aurorium Netherlands and, with an exception in July 2022 which I discuss below, did not request wider updates. The claimant and Ms Kearney observed in the disciplinary proceedings and in their evidence to me that there was a culture within the Aurorium group of "not-oversharing" financial data.

17. The Rabobank Loan Agreement was due to expire in June 2024. (The factoring arrangements within it in fact expired rather earlier, in December 2023, and lapsed then without any financial exposure for the respondent or Aurorium Netherlands, but nothing turns on this.) The respondent wished to renew the financing.

18. I take the history of the renewal negotiations primarily from the timeline provided by the claimant during his investigation interview on 28 March 2024 (273-279), together with relevant emails in the bundle of documents.

19. The discussions about possible renewal began in June or July 2023. At an early stage Rabobank requested and received accounts for Aurorium Netherlands and (for the first time) APH. Mr Vandenberg met Rabobank on 1 August 2023 to address the bank's concerns about debt ratios in APH's 2022 accounts. I am unclear from the evidence I heard whether this was in the context of the renewal or, as Ms Kearney suggested in evidence, part of a scheduled three-year review process, but it is immaterial for present purposes. This appears to have been the first time the bank asked for group financial information, but there is no evidence that, at least, as will emerge, until February 2024, the bank requested any further updates or information about APH's global position.

20. On 20 July 2023 outline proposals for refinancing were discussed and in September 2023 the claimant was able to negotiate a reduction in the bank's fees. In October 2023 Mr Windross provided financial information, limited to

Aurorium Netherlands. In November 2023 the bank set out its proposals for renewal/refinancing in a Discussion Paper (554-566), subject to the respondent's commercial agreement and acceptance by the bank's risk department (364). In the Discussion Paper, on a page headed "*Finance Structure Review. Recap of most important other conditions. Existing agreement to remain largely unchanged*" (558), a list of non-financial covenants included "*No loans out with a carve-out of €250K for subsidiaries and €100K*", referring to the existing covenant restriction, but this was not picked up by the claimant or anyone else. Negotiations followed about fees and the legal documentation, all of which was agreed by February 2024. Following a meeting on 30 January 2024 the bank advised by email on 31 January 2024 that they were confident of credit approval.

21. Meanwhile, Mr Windross had informed the bank at the meeting on 13 January 2024 that 2023 had been a poor year but results for early 2024 were more promising. At about the same time Rabobank became aware of the inter-company loans. They expressed initial concern that they did not want cash leaving the Netherlands. However, following further discussions, in which the claimant was involved, they agreed in early February 2024 to accept initially €2,000,000 of inter-company loans, soon extended but limited to the then-outstanding loan figure of €7,800,000. They explained their rationale for agreeing this, as a waiver of the terms of the covenant in the Rabobank Loan Agreement, in their letter of 24 March 2024 in which they ultimately declined to renew the financing (see below).

22. On 7 February 2024 came the first indication that there was a problem. In an email of that date, the bank said that dealing with a multinational "*adds complexity*". On 15 February 2024 the bank, whilst informing the claimant and Mr Windross that credit approval had now been received and accepting that "*we haven't discussed this before*", requested further information including the shortened profit and loss and consolidated net position at APH group level. Mr Windross, copying in the claimant, forwarded the request to Ms Kearney, who agreed to provide what was asked for, whilst saying that Mr Windross should try to focus the bank on the Netherlands as the group results were "*not pretty*". Mr Windross forwarded the requested information to the bank. The bank, however, then asked for APH group results for quarter 4. On 6 March 2024 Mr Windross shared the quarter 4 group results and offered a meeting with Mr Vandenberg. This was because there was a realisation the results were not good. The bank immediately expressed concern about the figures and requested a meeting. That took place with Mr Vandenberg on 13 March 2024 when he supplied further information including what he regarded as better results for early 2024.

23. On 20 March 2024 Rabobank emailed Mr Vandenberg, the claimant and Mr Windross with the decision to reject the application for refinancing (234-235). I accept this was a shock to all concerned within Aurorium/APH. I must set out the terms of the letter in detail. After referring to the meetings regarding the refinancing, it stated that

***"Regrettably, we have to inform you that after a careful and extensive study of the December 2023 finances of [APH] and assumed market perspectives of APH, Rabobank definitely lacks sufficient valid arguments to facilitate Aurorium with an extension of the aforementioned Rabobank facilities per your request."***

***To elaborate our point of view and reflecting our initial understanding of the performance of APH consolidated:***

***1 Based on your input with respect to the assumed group performance of APH, we were convinced, APH would have been able to benefit from the recently executed acquisition***

**strategy resulting in (i) a structural improvement of profitability and (ii) offering a healthy and sustainable future perspective for APH. Referring to the annual report of 2022 for APH and your high-level interim updates, this expectation was in our view justified since a material decline in performance of APH during 2023 and/or a material negative change of APH's financial position had not been anticipated respectively and previously not been indicated by you. Only after receipt of the interim December 2023 figures of APH, we became aware of the considerable deteriorated financial position of APH.**

**2 Referring to our initial understanding with respect to the assumed perspectives of APH, originally, we deemed it as logical, APH would centralise its internal funding possibilities and cash management. Solely for that reason, we could understand the rationale of your request approving to a certain extent (EUR 7.8m) internal intercompany financing to Aurorium to (group parts of) APH. Subsequently this could be considered as a waiver request since we, only for the first time in January 2024, have noticed, you have already transferred EUR7.8m to parts of APH in conflict with the terms, conditions and definitions of the applicable credit agreements between Aurorium and Rabobank which credit agreement has been accepted by you without raising any reservation. To solve this default situation, originally, we had a positive basic attitude to waive the existing intercompany position, assuming this position would contribute to the prosperous growth of APH without affecting the position of Rabobank. Additionally, EUR7.8m should be considered as the maximum position of the intercompany funding provided by Aurorium to APH.**

**Our conclusion: For us completely unexpected and contrary to what we have recorded in the previous conversations with you with respect to the assumed course of business of APH, the FY 23 performance of APH turned out to be very unsatisfactory. In essence, we have noticed (1) extracted from extraordinary costs, a severe operational loss over 23 (ii) resulting in a negative equity position, (iii) even after centralisations of EBITDA<sup>1</sup>, a senior leverage of approx. 7:1 and (iv) forecasted negative for EBITDA 24 reflects in the management case a free cash flow of only USD2m, which we deem insufficient for a company with annual turnover [of more than] USD 800m and an existing debt exposure exceeding EUR 1bn. Finally, 75% of the forecasted EBITDA is required to serve the annual interest costs. We are not sure what additional EBITDA is required once the average interest level will increase but obviously, the combination of high leverage and high interest costs does not leave room for any setback.**

**Consequently, the financial position and anticipated free cash flow of APH should be considered as an insufficient solid base for continuation of any credit facility as currently provided by Rabobank after maturity.**

**Decision: Based on our applicable relation and credit policy, we have to reject your request for any refinancing. Consequently, you are required to redeem the exposures of the existing facilities at their respective maturity date...."**

24. The loss of the Rabobank loan facilities which were required to be repaid by end June 2024 resulted in a shortfall in the respondent's group's resources of approximately \$12m with consequent liquidity issues.

25. In response to the unanticipated loss of the Rabobank loan, Mr Vandenberg instructed Nathan Oyler (the US-based Director of Financial Planning and Analysis) to investigate and prepare a report on what had gone wrong with the Rabobank financing process and who was accountable for the process and relationship leading to the lack of renewal.

26. On 27 and 28 March 2024 Mr Oyler (accompanied by Cathy Austin, UK HR Manager) interviewed Mr Vandenberg (238-240), Ms Kearney (241-244 and 245-249), Mr Frank Acampo (Aurorium Netherlands Finance Manager) (250-253), Mr Windross (254-259), the claimant (260-265 and 273-279) and Ms Nora Gibbons (Inside Sales) (280-281), and thereafter prepared his report (the copy in the bundle (693-701) is undated).

27. Ms Kearney, Mr Windross and the claimant challenged the accuracy of Ms

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<sup>1</sup> "EBITDA" means Earnings Before Interest, Taxes, Depreciation and Amortisation.

Austin's notes of the interviews, mainly on the basis that they were incomplete (266-271 and 282-285). Mr Oyler agreed to make some but not all of their requested changes but included both copies of the notes with his report, which is why there are two copies of the notes of the claimant's and Ms Kearney's interviews in the bundle. I have not found the differences significant in my decision; the changes are small and appear largely to reflect a desire that the notes be a complete record of what was said.

28. In his report, having set out the detail of the discussions about renewal, Mr Oyler concluded that:

- (a) Although the covenants in the Rabobank Loan Agreement about other aspects of the relationship (including the provision of local financial information) had been observed, it seemed likely that the covenant prohibiting loans had not;
- (b) As Finance Director and the owner of the banking relationship with Rabobank, the claimant should have been aware of what Aurorium Netherlands could and could not do whilst borrowing from Rabobank;
- (c) Although Ms Kearney and Mr Vandenberg had approved the inter-company loans, the claimant should have communicated that the loans were likely to be non-compliant before proceeding. That communication had not happened;
- (d) He believed that the breach of covenant was key in the non-renewal. Given Rabobank's concerns about the 2022 and 2023 results, the breach had exacerbated the concerns about financial standing and the need to draw on the Rabobank loan for funds needed elsewhere and not just for the Netherlands;
- (e) The relationship with Rabobank had been in good standing and the renewal process had begun. Although the bank's focus was mostly Netherlands-related, no efforts had been made to share global and industry updates. This should have been part of the relationship with the bank. It was important to keep bankers up to date. Given that Rabobank had expressed concern about the 2022 results, it should have been apparent to Mr Windross and the claimant that the bank would want to see 2023 results and if proper communication had happened, Rabobank would not have been caught off-guard and more than likely would have worked on different terms for the relationship to continue.

29. Based on these findings, Mr Oyler recommended that the claimant *"be taken through a gross misconduct disciplinary hearing to answer the potential violation of restricted loan covenants and a breach of confidence by not keeping Rabobank apprised of overall Aurorium financial status throughout 2023 resulting in the loan not being extended by Rabobank"* (698).

30. The respondent's HR department appointed Rory Masureik, then an Operations Excellence Management Consultant at the respondent's Halebank, Widnes site, to conduct the disciplinary hearing. Mr Masureik wrote to the claimant on 8 April 2024 (286-287) inviting him to a disciplinary hearing on 11 April 2024 (rearranged at the claimant's request to 18 April 2024 so he could be accompanied (290-291)). He enclosed a copy of Mr Oyler's report and supporting interview notes. He advised the claimant that the matter under consideration might fall within the definition of gross misconduct and lead to dismissal. The disciplinary charge set out in the letter was that:

***"The purpose of the meeting is to consider an allegation of gross misconduct and/or a breakdown in trust and confidence.***

***The allegation that will be discussed at the hearing is that:***

- ***You have potentially violated the Restricted Loan Covenants.***

***The basis for the allegation is that you did not keep Rabobank appraised of overall Aurorium financial status throughout 2023 resulting in the loan not being extended by Rabobank thereby reducing Aurorium's liquidity by \$12m."***

31. I observe that the wording of the disciplinary allegation was confused. It was never contended that the failure to keep the bank informed led to the breach of covenant. Although part of the same course of events, they were separate and distinct allegations and, as I shall describe, were dealt with as such during the disciplinary proceedings.

32. Ahead of the disciplinary hearing, Mr Masureik reviewed Mr Oyler's report and interview notes, together with the claimant's job description. He also asked Mr Oyler to carry out a further interview with Mr Windross about the circumstances of the inter-company loans (300-309).

33. In his witness statement, Mr Masureik said this:

***"After reading the interview notes, I was immediately concerned that there seemed to be a very serious dereliction of duty on the claimant's part – he did not appear to be managing the respondent's relationships in the way that he, as European Financial Director, should. I was satisfied that there was a disciplinary case for the claimant to answer... [paragraph 7]***

***I was concerned that the claimant was not delegating work [to Mr Windross] appropriately... [paragraph 11]***

***I felt that there were a number of points at which the claimant should have identified risk associated with the respondent's relationship with Rabobank and taken charge of that relationship, or at the very least escalated that risk. I wanted to hear his side, give him the chance to explain what had happened, and see whether there were any elements arising in mitigation." [paragraph 13]***

34. This evidence gives at least the impression of prejudgment (for example, in concluding ahead of the disciplinary hearing that *"there seemed to be a very serious dereliction of duty on the claimant's part"*). I shall return to this in my conclusions.

36. The disciplinary hearing proceeded on 18 April 2024. Mr Masureik was accompanied by Ms Austin and the claimant by a work colleague, Julie Boyd. The claimant provided a substantial number of documents ahead of the hearing (310-578). I have full notes of the hearing in the bundle (579-622).

37. The claimant said in evidence that Mr Masureik did not listen to him during the disciplinary hearing and did not allow him to get across his points. This was not pursued with Mr Masureik in cross-examination, although it was suggested to him that dismissal was a foregone conclusion, which he disputed, saying that he did not make his decision until he had considered everything the claimant had said. The notes of the disciplinary hearing do reveal, however, that Mr Masureik interrupted the claimant to an unusual extent and repeatedly challenged the claimant to accept propositions such that he was accountable for the banking relationship with Rabobank. To me this indicated firstly, that Mr Masureik had formed views ahead of the disciplinary hearing about the claimant's guilt, as reflected in his evidence before me in the extracts from his witness statement set out above, and secondly, he was frustrated at what he saw was the claimant's

reluctance to accept any responsibility for the loss of the financing and his tendency to blame others.

38. The claimant's case in the disciplinary hearing was that:

- (a) He had not been involved in the Polyscope acquisition and did not understand why disciplinary allegations were being pursued against him;
- (b) He considered that the notes of his investigation hearing were inaccurate;
- (c) In response to Mr Masureik suggesting that post-acquisition, he was accountable for the relationship with Rabobank which fell within his job description, he said that his workload did not permit that, and he had delegated the relationship to Mr Windross. It was not his responsibility. He did not agree that the buck stopped with him;
- (d) He considered that the respondent's legal team should have been aware of the covenant when drawing up the intercompany loan agreement, as should Mr Vandenberg as he had been involved in the pre-acquisition due diligence;
- (e) He considered that Rabobank's decision had nothing to do with the breach of the loan covenant and was only because of the US results;
- (f) He was not responsible for keeping Rabobank apprised of group results;
- (g) The finance team was under-resourced and his workload was not manageable. Ms Kearney had told him to concentrate on recruitment and statutory accounts;
- (h) It was incorrect that he had not kept Mr Vandenberg apprised of the situation with Rabobank. He had been part of a call from Ms Kearney to Mr Vandenberg on 20 March 2024 immediately they knew about the decision;
- (i) It had already been announced at a finance meeting that he would be leaving the business and he believed there was some kind of agenda to remove him.

39. By letter dated 23 April 2024 Mr Masureik communicated his decision, which was that the claimant should be dismissed with immediate effect but with three months' pay in lieu of notice (623-626). The dispositive paragraphs of his letter were as follows:

***"You have failed to assume the full accountability of your role, which involved, inter alia, protecting the company from risk. This is due, in the first instance, to you failing to appraise yourself of the restrictive covenants that underpinned the relationship that Aurorium had with Rabobank. Secondly, you failed to provide the necessary guidance to the business that would have halted the transfer of cash from the Rabobank facility out of the Dutch Territory. Thirdly, you failed to exercise the judgment required of your role in recognising, on more than one occasion, that the relationship with Rabobank was in need of closer management.***

***You failed to take the lead in ensuring that Rabobank was adequately apprised of the challenges that the global chemical industry was facing in 2023, and the consequent effect on Aurorium's financial performance. This is especially important when, after viewing the 2022 results, Rabobank required the intervention of the CFO to mitigate their concerns surrounding the debt ratio. Further, the inclusion of the additional requirements to submit the consolidated Aurorium annual figures before 1 July and the annual forecast before 1 January each year (in their presentation titled 2023/4 "Discussion Paper Aurorium NL refinancing") should have signalled you that the relationship was going to need a high***

degree of management.

***Your argument that Rabobank's consent to allow the €7.8m interco loan in no way contributed to the final outcome is not substantiated by the evidence. In Rabobank's email on the 20 March 2024, they clearly expressed concern and stated that they were only willing to grant the waiver were it to "contribute to the prosperous growth of APH without affecting the position of Rabobank". They also made a point of stressing that the current extent of the loan could not be increased, which demonstrates their concerns at how Aurorium unilaterally acted without prior approval from Rabobank.***

***Your submission that fulfilling the duties outlined in your job description was impossible due to insufficient bandwidth, staffing issues and statutory reporting deadlines is relevant and should be viewed as mitigation. However, any regional director role requires the management of multiple constraints within tight deadlines in a manner that enables the director to rise above the day-to-day details in order to ensure that all competing constraints are appropriately risk-assessed, prioritised and resourced.***

***It is clear from the hearing and the evidence presented that the relationship between yourself and the business (particularly the CFO) has been irreparably damaged. Following the call to the CFO initiated by Carrie Kearney (with Keith Windross and yourself present) on the 20 March, to share the news that Rabobank would not renew the facility, there was no further proactive engagement with the CFO by yourself to propose your mitigation strategy for the European Region. Due to this, the frustration felt by the CFO led him to then contact you directly on Friday 22 March 2024 to discuss the matter further. The CFO also provided a statement that during his call with Rabobank on the 13 March 2024, it became abundantly clear that Rabobank had not been educated on the state of the broader chemical market and how, in the context of the wider industry, APH's performance in 2023 had been "solid". The accountability for this lies within your remit and the failure to proactively manage the relationship has resulted in the business losing faith in your ability to effectively execute your duties as EU Finance Director."***

40. Although Mr Masureik considered that the claimant was guilty of serious negligence amounting to gross misconduct meriting immediate dismissal, he agreed that he should receive pay in lieu of notice in view of the mitigation he had presented.

41. In his evidence to me, Mr Masureik expanded on his reasons for deciding the claimant should be dismissed:

(a) He considered that the claimant had failed to understand his accountability for the breach of the Rabobank loan. He accepted that the claimant had delegated day-to-day responsibility to Mr Windross, but he remained accountable. The claimant should have ensured that he acquainted himself with the terms of the loan and supervised Mr Windross in managing the relationship with Rabobank. He regarded this as a fundamental failing. The claimant was responsible for managing risk and his failure to be aware of the covenant meant that he allowed the respondent to breach its banking covenants;

(b) He found that the claimant should have advised the business that the inter-company loans would breach the covenant. He noted that the Rabobank discussion paper referred to the cap on loans and the claimant should at least have spotted this;

(c) He did not accept that Mr Vandenberg and Ms Kearney should have been aware of the covenant because of their involvement in pre-acquisition due diligence. Mr Vandenberg's and Mr Kearney's roles were global roles and responsibility for the European business rested with the claimant;

(d) He accepted that the claimant had responsibility for several businesses and was under workload pressure. However, in his view the claimant had to operate

as a European Finance Director should act, which meant identifying and managing risks, and cashflow was one of the risks. It was the claimant's responsibility to prioritise and manage within multiple constraints and under tight deadlines;

(e) He accepted that Mr Windross had provided Rabobank with all the information they requested. But he did not accept that it was unfair to expect the claimant to have ensured Rabobank were aware of the deteriorating performance at a group level. This was part of proactively managing the relationship with the bank. The fact that the deterioration was unexpected was a material factor in the bank's decision not to renew, as the bank's letter of 20 March 2024 indicated;

(f) He did not agree with the claimant's contention that the bank's decision not to renew had nothing to do with the breach of covenant. Whilst the bank had indicated it would waive the breach, the bank expressed concerns about it in the letter of 20 March 2024. The bank felt that the inter-company loans were effectively an unsecured loan out of the Dutch business;

42. Ultimately, Mr Masureik decided that *"the claimant had been seriously negligent in failing to proactively manage the relationship with Rabobank, in not being aware of the relevant restrictions under the loan agreement with Rabobank and in failing to raise the alarm about the deteriorating relationship with Rabobank on 7 February 2024"*. He decided that this had led to the business and its CFO no longer having trust and confidence in him. However, he considered that the workload pressures and the lack of advice about the terms of the loan at the time of the acquisition were mitigating factors and paying notice was *"fair and just"* in the circumstances.

43. The claimant appealed against his dismissal. The appeal was heard by Amanda Freeman, Global Operations Director – Speciality Solutions, on 13 May 2024. There is a full transcript of the hearing in the bundle (636-673). The claimant had no criticisms of the way Ms Freeman conducted the hearing and considered that she listened to the points he made without interruption.

44. Ms Freeman rejected the appeal in a very full letter dated 30 May 2024 (674-680). After narrating the claimant's grounds of appeal (674) and the points raised by him during the appeal hearing (674-677), she set out her conclusions, which I summarise below:

(a) Rabobank did not renew the loan due to (1) poor US financial results for 2023, (2) the poor results being unexpected and contrary to information they had previously received; and (3) the intercompany loans which were a breach of the covenant in the Rabobank Loan Agreement. Although she accepted that the claimant had no impact on the US results, point (2) indicated a mismanagement of expectation and relationship between Aurorium and Rabobank;

(b) In his role the claimant had full awareness that APH had not met sales and EBITDA targets and failed to make the linkage that overall financial performance would be negatively impacted by this;

(c) He failed to assess the potential impact of this on the Rabobank loan renewal process and failed to escalate and seek guidance from senior management on what information should be shared with Rabobank;

(d) He failed to assess the covenants in the Rabobank Loan Agreement and

alert the business about them when inter-company loans were suggested;

(e) He failed adequately to delegate the management of the Rabobank relationship to his subordinate (Mr Windross). He was fully aware of what Mr Windross was doing as all emails were copied to him. He knew Mr Windross had no experience of managing a banking relationship but did not provide adequate guidance, support, expectations, coaching and mentoring to ensure the covenants were well understood and performance expectations adequately managed;

(f) She acknowledged the mitigation in the claimant's favour, including the lack of advice from the legal team at the time of acquisition and when the inter-company loans were negotiated; the bandwidth and resource constraints; the challenges of his role expanding to include four countries and staff attrition in the finance team; and his immediate contact with Ms Kearney when Rabobank communicated on 20 March 2024 that the financing would not be renewed.

45. In evidence, Ms Freeman expanded on the reasons for her decision:

(a) She had noted the claimant's contention that the decision to dismiss had already been made as a member of the finance team in the US had announced in a meeting that the claimant had left. She apologised for this but did not feel it necessary to investigate further. Mr Masureik had no involvement with the individual in the US, nor had the individual had any part in the disciplinary proceedings;

(b) The claimant had confirmed that there were no specific inaccuracies in the notes of the interviews conducted during the investigation;

(c) The claimant had believed Mr Vandenberg had lied because of the assertion that he, the claimant, had not reached out to senior management. He provided evidence that he had contacted senior management. Ms Freeman felt that was immaterial to the reasons for the dismissal which were about the mismanagement of the Rabobank loan;

(d) She had accepted that the claimant's workload had increased but her view was that it was the claimant's responsibility to manage that workload;

(e) The claimant had accepted that Mr Windross had copied him in on emails. He could not say whether he had provided Mr Windross with guidance about managing the relationship. In her view the claimant had failed to ensure he had properly delegated the responsibility and given Mr Windross supervision and guidance;

(f) She had analysed the reasons for Rabobank's decision. The claimant asserted it was because of the US results. In her view the letter made clear a reason was the element of surprise. The letter also referenced the breach of covenant. She accepted that the claimant was not responsible for the US results but he had failed to manage the Rabobank relationship proactively as he should have;

(g) In her view there were "clear signs of misconduct" by the claimant as European Finance Director and the decision to dismiss the claimant had been correct.

46. This concluded the claimant's appeal. He presented his claim to the Tribunal on 15 August 2024.

## **Submissions**

47. Mr Mann and Ms Kight provided written (and, in Ms Kight's case) oral submissions, for which I am grateful. I shall refer to these as necessary in my conclusions.

## **Relevant law**

48. The relevant law is familiar and is not in dispute. An employee's right not to be unfairly dismissed by their employer is in section 94 of the Employment Rights Act 1996. Under section 98(1) of the 1996 Act, in determining whether a dismissal is fair or unfair, it is for the employer to show what was the reason (or, if more than one, the principal reason) for the dismissal, and that it was a reason falling within section 98(2) or some other substantial reason of such a kind as to justify the dismissal of an employee holding the position which the employee held.

49. Assuming the employer has satisfied section 98(1), the Tribunal must then consider whether the dismissal was fair within section 98(4). That provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on: (a) 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.

50. In cases of misconduct dismissals, the relevant principles as to fairness within section 98(4) are set out in the well-known decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. First, the employer must establish that it had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

## **Discussion and conclusions**

51. I begin with the question whether the respondent has satisfied section 98(1) of the 1996 Act as to the reason for the claimant's dismissal. The respondent says that the reason for dismissal was a reason relating to the claimant's conduct, and, therefore, a potentially fair reason falling within section 98(2)(b) of the 1996 Act.

52. At paragraph 2 of his submissions, Mr Mann says that the principal reason for dismissal was gross misconduct and a breach of trust and confidence.

53. The invitation to the disciplinary hearing (290-291) stated that the purpose

was to consider an allegation of gross misconduct and/or a breakdown in trust and confidence. In the outcome letter, Mr Masureik stated that:

**“It is clear from the hearing and the evidence presented that the relationship between yourself and the business (particularly the CFO) has been irreparably damaged ... the failure to proactively manage the relationship has resulted in the business losing faith in your ability to effectively execute your duties as EU Finance Director.”**

54. The disciplinary and appeal hearings and the outcome letters focussed on whether the claimant was guilty of serious negligence amounting to gross misconduct. Mr Masureik and Ms Freeman confirmed in their evidence to me that they concluded that he was and should be dismissed. In their view, the business had lost faith in him because of his misconduct. However, the reason for dismissal was his serious negligence in the performance of his duties, the loss of trust and confidence resulting from that misconduct. The claimant was dismissed for a reason relating to his conduct within section 98(2)(b) and the respondent has down that it had a potentially fair reason as required by section 98(1).

55. I turn then to section 98(4). The claimant has not contended that the respondent did not have a genuine belief in guilt, and I accept, having heard their evidence, that Mr Masureik and Ms Freeman had a genuine belief in guilt, for the reason they gave in their outcome letters. I then remind myself that the question I must answer is whether in all aspects, the decision to dismiss fell within the band or range of reasonable responses open to an employer in the circumstances. It may be that other employers would have reached a different conclusion. It may be that I would have acted differently. Such considerations are immaterial. It is not for me to substitute my view for that of the reasonable employer. The question is whether this employer acted reasonably within section 98(4).

56. In paragraph 4 of his submissions, Mr Mann, largely replicating the claimant's contentions during the disciplinary proceedings, robustly says that the respondent did not act reasonably in all the circumstances in treating the disciplinary matters against the claimant as sufficient grounds for dismissal, for the following reasons:

(a) He says that the claimant was not guilty of misconduct in that the loss of the Rabobank loan was attributable to the results of the US parent company and not the breach of the covenant;

(b) The claimant was not aware of the covenant because he was not involved in due diligence at the time of the Polyscope acquisition, he delegated the management of the relationship with Rabobank to Mr Windross, he was told to prioritise the preparation of statutory accounts and also had to engage in large amounts of staff recruitment and there was a lack of legal advice when the Netherlands company was acquired and when the agreement for the inter-company loan agreement was prepared;

(c) The claimant authorised the inter-company loans with the agreement and instruction of senior management, he kept senior management informed of the loan negotiations and shared information with Rabobank when asked;

(d) The claimant was unaware of any problems with the loan until March 2024 and advised senior management immediately he did know. The Europe Region was too large for a single person to manage and he, Mr Kearney and Mr Windross advised Mr Vandenbergh of the staff shortages.

57. At paragraph 33 of her submissions, Ms Kight, whilst accepting that some reasonable employers might have taken a less robust approach, contends that it cannot be said that no reasonable employer could have dismissed in the circumstances:

- (a) The claimant was in a senior management role and had failed to acknowledge and accept that he remained accountable for the Rabobank relationship;
- (b) It was vital that individuals in senior positions were accountable for and up to speed with key financial agreements within their remit and can be relied upon to identify and manage risk;
- (c) The claimant's failure to identify the covenant and raise it with senior management led to the respondent being in breach of its facilities agreement with Rabobank. The bank itself had identified the breach and referred to it in its rationale for not renewing the financing.

58. In my judgment, there is force in Mr Mann's submissions. There can be no doubt from the terms of Rabobank's letter of 20 March 2024 that the US results were the main reason for the bank's decision. The claimant was undoubtedly under severe pressure of work as Europe Finance Director. He was responsible for several companies and faced staff shortages. He made senior management aware of the issues. He was asked to prioritise areas of work which did not include the relationship with Rabobank. He delegated the day-to-day management of that relationship to Mr Windross. It was accepted in the disciplinary proceedings that Mr Windross had provided Rabobank with all the information they required and Rabobank were mainly concerned with the Netherlands company. The claimant was not assisted by the failure of the respondent's legal team to report on the loan agreement at the time of acquisition or to advise at the time of entering into the inter-company loans that the loans might be problematic.

59. The minutes of the disciplinary hearings, the outcome letters and Mr Masureik's and Ms Freeman's evidence all show that the factors identified by Mr Mann were considered by them.

60. Mr Masureik noted that Rabobank had referenced the breach of covenant in the letter of 20 March 2024. They had been prepared to waive the breach only on the basis the inter-company loans would contribute to the overall prosperity of APH and not weaken the bank's position. He did not accept, as the claimant had contended, that the poor US results were the only reason and considered that the breach had been a factor. Ms Freeman found that Rabobank did not renew the loan for three reasons: (1) poor US financial results for 2023, (2) the poor results being unexpected and contrary to information they had previously received; and (3) the intercompany loans which were a breach of the covenant in the Rabobank Loan Agreement. She accepted that the claimant had no impact on the US results.

61. What is clear, however, is that the claimant was not dismissed because Rabobank refused to renew the loan. He was dismissed for what was identified as serious negligence which had contributed to the bank's decision. Whilst I think the claimant is correct that the main reason for the bank's decision was the poor results of the US parent company – to my mind, that is clear from the wording on the bank's letter of 24 March 2024 – I consider that management were entitled as

reasonable management to conclude that the breach of covenant was a factor in the bank's reasoning in deciding not to renew the financing because of the poor group results. That was a reasonable conclusion for management to reach from the terms of the letter of 20 March 2024.

62. It was not in dispute during the disciplinary proceedings that the claimant did not know about the covenant. It was equally not in dispute that he did not alert senior management to it and the possible consequences for the inter-company loans, again because he did not know about it. Mr Masureik and Ms Freeman considered that he should have familiarised himself with the terms of the Rabobank loan, including the covenant (and sought advice about it if he was uncertain), either when he became responsible for Aurorium Netherlands or when the inter-company loans were proposed, but he had not done so. It was his responsibility to do this. This failure had led to Aurorium Netherlands breaching the terms of the Rabobank Loan Agreement which prohibited inter-company loans of the amounts being entered into.

63. In my judgment, Mr Masureik and Ms Freeman were entitled as reasonable management to reach this conclusion. As Europe Finance Director, the claimant was responsible and accountable under his job description for management of relationships with banks. It is surprising that as Europe Finance Director, he was unaware of the provisions of the financing arrangements for Aurorium Netherlands which was a company within his remit. This led to substantial risk in that the respondent was placed in a position that it breached its banking covenants. It is true that the claimant was not assisted by the lack of advice about the covenant at the time of acquisition and when the inter-company loans were entered into, but management were entitled to conclude that it remained his responsibility to know what Aurorium Netherlands could and could not do and he was guilty of serious negligence in not knowing or putting himself in the position where he would know this. It is unfortunate that, as Mr Masureik noted, he failed to spot the reference to the covenant in the November 2023 Discussion Paper.

64. The claimant was under serious workload pressures and faced with staff shortages. He was asked to concentrate on other priorities. But as Ms Kight submits, the claimant was in a senior management position. Mr Masureik found, and set out in the dismissal letter, that any regional director role requires the management of multiple constraints within tight deadlines in a manner that enables the director to rise above the day-to-day details in order to ensure that all competing constraints are appropriately risk-assessed, prioritised and resourced. In the appeal hearing, Ms Freeman accepted that the claimant's workload had increased but her view was that it was the claimant's responsibility to manage that workload. Mr Masureik and Ms Freeman regarded the claimant's workload as a mitigating factor only. In my judgment, they were entitled to assess the claimant's conduct by reference to the senior position he held. They were entitled to conclude that it was his responsibility to manage his workload and, specifically, to ensure he was familiar with the terms of the banking arrangements of a company within his remit. That was an assessment that was within the range of reasonable responses.

65. The second allegation against the claimant was that he had failed to ensure that Rabobank were kept informed about the problems facing the chemical industry and the likely effect of this on APH's group results.

66. As to this, Mr Masureik accepted that the claimant had delegated the management of the Rabobank relationship to Mr Windross. He accepted that Mr

Windross had provided Rabobank with all the information they requested. But he concluded that the claimant should have ensured Rabobank were aware of the deteriorating performance at group level. This, he concluded, was part of proactively managing the relationship with the bank. The fact that the deterioration was unexpected was a material factor in the bank's decision not to renew, as the bank's letter of 20 March 2024 indicated. In the appeal, Ms Freeman concluded that the claimant had full awareness that APH had not met targets and failed to make the linkage that overall financial performance would be negatively impacted by this. He failed to assess the potential impact of this on the Rabobank loan renewal process and failed to escalate and seek guidance from senior management on what information should be shared with Rabobank.

67. I have not found this straightforward, and the decision that the claimant was guilty of serious negligence in this respect seems somewhat harsh, in light of the fact that Rabobank were not requesting information about the group position from between summer 2023 and February 2023. In the end, however, I have had regard to the respondent's case that the concern was that the claimant was not managing the relationship proactively. I have concluded that Mr Masureik and Ms Freeman were entitled as reasonable management to decide that the claimant was guilty of serious negligence in failing proactively to keep the bank informed (or ensure that Mr Windross kept the bank informed) about the pressures on the chemical industry and the likely impact on group results. They were entitled to take into account that the bank had asked to see the 2022 group results in July 2023, raising the likelihood that the bank would be concerned about the 2023 results also. In the context that the business was in the course of renegotiating the financing arrangements, they were entitled to decide that it was part of the claimant's responsibility, in a senior finance role, within the negotiations, to provide the information as part of the proactive management of the relationship with Rabobank. It meant that the relationship would require closer management. It was his responsibility to be proactive with the bank and even if he delegated day-to-day management to Mr Windross, to ensure that the bank were advised of the risks to profitability at group level. It is clear from the terms of the letter of 20 March 2024 that a significant reason for the bank's decision was that the poor results were unexpected. If the claimant was unsure what he could or should disclose, he could and should have sought advice from senior management.

68. In reaching these conclusions about the reasonableness of the respondent's management's conclusions that the claimant was guilty of serious management in the performance of his duties, I have been conscious of the possibility that the respondent was looking for someone to blame, and to the risk of management viewing responsibility with the benefit of hindsight rather than with necessary objectivity based on events and knowledge at the time. I have also had in mind that Mr Masureik, in my judgment, prejudged the claimant's responsibility and this carried over into aspects of how he conducted the disciplinary hearing. However, I find that in the outcome letters and in their evidence, Mr Masureik and Ms Freeman showed a detailed and careful analysis of the facts and the claimant's responsibility in the performance of his duties, leading to conclusions as to guilt which were reasonable for them to reach.

69. Mr Masureik and Ms Freeman decided that the claimant's conduct merited immediate dismissal, albeit with pay in lieu of notice. I have clearly in mind that it will often be unfair to dismiss for a first offence. In my judgment, however, they were entitled to conclude as reasonable management that the misconduct that they had found was serious enough to merit dismissal, having regard to the claimant's senior role and the consequences resulting in the business being in

breach of its banking covenants and impacting on the bank's decision to refuse to renew the finding. The decision to dismiss fell within the band or range of reasonable responses open to management in the circumstances. The decision to reflect the significant mitigation by way of pay in lieu of notice also fell within the range of reasonable responses.

70. No serious criticisms have been made of the procedure followed by the respondent. It is not contended that any further investigation should have taken place. I have found that Mr Masureik was guilty of a degree of prejudgment of the claimant's responsibility in advance of the disciplinary hearing and this infected how he dealt with the hearing, but I find that he properly considered the points made by the claimant in reaching his decision. In any event the claimant's representations were fully and carefully considered by Ms Freeman in the appeal hearing. I have noted the claimant's criticisms of the accuracy of the notes of the investigation meetings but I have not found these significant.

71. Finally, the claimant told Ms Freeman in the appeal hearing that a member of the finance team in the US had commented in a finance meeting that the claimant was no longer employed by the respondent, in advance of the disciplinary hearing and Mr Masureik's decision. Ms Freeman discounted this and did not investigate it, observing that Mr Masureik and the individual in question had no dealings with each other.

72. I do not consider that Ms Freeman should have investigated this allegation. It had nothing to do with the substantive fairness of the decision to dismiss. She was entitled to conclude that a member of the finance team in the US with no direct involvement in the matters at issue would be unlikely to have known anything about the claimant's position. She had no evidence that the decision had been made before the disciplinary hearing. She was entitled to focus on the substantive issues relating to the claimant's conduct and the fairness of Mr Masuriek's decision.

73. I add this. I recognise that the claimant does not believe he was guilty of any misconduct meriting dismissal, or indeed any misconduct at all. The decision I have reached does not signify that I consider the claimant was guilty of serious negligence amounting to gross misconduct. It is not my role to make that assessment. My decision is that in all aspects of how they dealt with the disciplinary issues against the claimant, including the procedure they followed, the respondent's management were entitled as reasonable management to conclude that the claimant was guilty of gross misconduct justifying his immediate dismissal. That was their decision, and in my judgment, it was a decision that was reasonable. In so deciding they took into account the significant mitigation offered by the claimant, which they considered merited that he should receive pay in lieu of notice. I accept that other employers might well have reached a different decision. But I cannot say that the decision was outside the range of reasonable responses, with the result that this claim fails and is dismissed.

Approved by: ***S D Robertson***

**Employment Judge Robertson**

**16 October 2025**

## JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

### Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

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