



EMPLOYMENT TRIBUNALS

Claimant: Mr M A Evans

Respondent: Adaptix Limited

Heard at: Reading On: 9, 10, 11, and 12 December 2025

Before: Employment Judge Gumbiti-Zimuto

Representation

Claimant: In person

Respondent: Mr J Wynne, counsel

RESERVED JUDGMENT

1. The claimant's complaint of breach of contract is dismissed.
2. The claimant's complaint of unfair dismissal is not well founded and is dismissed.

REASONS

1. In a claim form presented on 15 September 2023 the Claimant made complaints of breach of contract and unfair dismissal. The Respondent denied the Claimant's complaints. The issues to be decided in his case are as follows:
 2. Unfair dismissal
 - 2.1 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 between the Claimant and the Respondent.
 - 2.2 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination of whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
 3. Breach of contract
 - 3.1 Did the Claimant comply with the conditions and requirements of the letter of 31 March 2021 as revised on 6 July 2022?

3.2 The Tribunal will need to decide what was intended by the parties when they referred to “equity investment” in the letter of 31 March 2021 as revised on 6 July 2022.

3.3 Was the Respondent in breach of contract by failing to increase the Claimant’s pay in accordance with the terms set out in the letter of the 31 March 2021 as revised on 6 July 2022?

4. The Claimant gave evidence in support of his own case. The Respondent relied on the evidence of Mrs Hannah Lawrence-Lelitte, Mrs Catherine Blanshard, Mr Stephen McQuillan, Mrs Sara Small, Mr Willem Baralt and Mr William Denman. The witnesses produced written statements which were taken as their evidence in chief. I was also provided with a Trail Bundle containing about 1009 pages of documents. From these sources I made the following findings of fact.

Background

5. The Respondent is an early stage company specialising in the development and manufacture of a new form of X-ray source and related software, for the medical devices industry. At the relevant time the company was still pre-revenue and remained reliant on external investment and grant funding. The Respondent’s parent company, since 15 September 2023, is Avingtrans Plc.
6. The Claimant is a founder of and was employed by the Respondent between 10 October 2014 and his dismissal on 16 June 2023. Until the termination of his employment, the Claimant was a statutory Director of the company. The Claimant has also been a shareholder of the company and continued to be so after his dismissal. Throughout his period of employment with the Respondent, the Claimant held the title of Chief Executive Officer.
7. The Claimant’s remuneration was determined individually and by approval of the Respondent’s Remuneration Committee.
8. Prior to the Claimant’s dismissal there had been a history of dispute between the Claimant and the Respondent over the Claimant’s remuneration package. On 9 November 2020, the Claimant had sent the Respondent a “Letter before Action” citing breaches of the terms of his employment and on 24 November 2020, the Claimant submitted his resignation which he subsequently withdrew after reaching agreement with the Respondent over his terms of remuneration on 26 November 2020.
9. On agreeing terms with the Claimant the Chair of the Remuneration Committee wrote to the Claimant setting out the agreed terms, the letter included the following passages: starting with, “*following your resignation letter of the 24th November, and subsequent offer to rescind it should your demands be met, also dated 24th November, the Remcom has taken the*

view that it is in the best interests of the company at this critical time that we move to retain your services in order to attempt to secure further funding to ensure the company's survival in the near term.” It concluded with, “The above offer is conditional upon your agreement not to attempt to coerce further concessions from the company by way of threats to resign or otherwise disrupt the company.”

10. On 1 March 2021 the Claimant sent a letter commencing a formal grievance arising from what the Claimant saw as the Respondent's failure to commence an arbitration process that would address the issue of the Claimant's remuneration. The Claimant considered that there had been a failure by the Respondent to complete independent arbitration to resolve the issues as had been agreed in November 2020. The grievance letter included the sentence: *“You should assume any statement to the effect “we can't do anything close to a transaction” will result in immediate resignation on the basis of constructive dismissal due to a pervasive breach of trust.”*
11. The Respondent's Remuneration Committee met on 23 March 2021 and resulted in an offer being made to the Claimant in a letter dated 23 March 2021. The offer dealt with a number of issues and included the following in respect of salary: *“Your basic salary is to increase to £159,135 per annum from 1 April 2021, rising to £186,850 until 31 March 2022 subject to the successful completion of an ‘A’ round. This ‘A’ round is defined as the company receiving equity investment of £8M or more.”* The Claimant and Respondent reached agreement in these terms, the grievance was resolved, and arbitration was unnecessary. The Claimant and the Chair of the Remuneration Committee signed a copy of the letter dated 31 March 2021 as evidence of acceptance of those terms.
12. The agreement of 31 March 2021 was revised on 6 July 2022. The Claimant had not by that date achieved the target that would result in the pay increase being activated. The revised agreement, in so far as it dealt with the Claimant's 'salary increase' stated: *“On receipt by the Company of an additional £4M equity investment, which is anticipated as being received by Sep 2022, your basic salary will increase to £186,850.”* That revision to the agreement was again signed by the Chair of the Remuneration Committee and the Claimant. The Remuneration Committee did not waive the requirement that the funding be equity investment of eight million pounds or more. The time by which the target was to be met had been extended.
13. The Claimant secured equity investments from Avingtrans Plc in October 2021 and January 2022 totalling £6M.
14. In October 2022 the Claimant secured, from Avingtrans Plc, a £2M convertible loan note. That is a loan where it is possible to convert the debt to become equity if certain situations occur, but unless and until that happens, it remains as a debt, not equity.

15. The Respondent's position is that it is a loan and therefore not equity investment for the purposes of the 31 March 2021 agreement; the Respondent's position is that it is not equity investment until the loan is converted to equity in the form of shares. The Respondent says that the Claimant has therefore not met the requirement to achieve £8M equity investment.
16. The Claimant's position is that the £2M convertible loan note is equity investment within the meaning of the agreement made by the parties on 31 March 2021 and the 6 July 2022 revision. The Claimant's position is that he has therefore met the conditions and requirements for a pay increase in accordance with the 31 March 2021 letter and the 6 July 2022 revision.
17. The parties agree that if the convertible loan note is equity investment the trigger for an increase in the Claimant's salary has been met (the Claimant's position) or arguably met (the Respondent's position).¹ The Respondent's position is that the Claimant is not owed any additional salary payments. The Claimant's position is that the Respondent is in breach of contractual obligations to pay him the additional salary.
18. The Claimant's remuneration continued to be an issue of dispute between the Respondent and the Claimant. The Remuneration Committee commissioned a report by 'Rem.N' to advise on the question, that reported in November 2022.
19. From 1 February 2023 Mr Willem Baralt became the Chair of the Remuneration Committee. In recruiting Mr Baralt as Fundraising Chair the Respondent believed that he had the "networks within the investor community and proven fundraising track record to help the executives secure significant investment in the company".
20. Mr Baralt had experience in corporate fundraising and saw his own role with the Respondent as being to work with the Claimant to raise required funds. The position of the Respondent at the time of his appointment was that without further funding the Company was going to run out of cash within months. To succeed the Claimant and Mr Baralt were going to have to work together to secure the investment required by the Company.
21. Mr Baralt took over discussions and negotiation with the Claimant about his salary. In an email from Mr Mclean on 2 February 2023 the Claimant was informed that the Remuneration Committee approved an increase of the Claimant's base salary 'rounded to £170,000'. After further discussion and negotiation with the Respondent the Claimant rejected this offer.

¹ I understood the evidence of the Respondent's witness Mrs S Small to be that there had been no extension of the time to meet the target of £8M beyond September 2022, however this did not appear to be the position that was being adopted by the Remuneration Committee.

22. In a letter dated 17 May 2023 Mr Baralt made the Claimant a further offer to increase his salary to £189,000.² The Claimant made it clear to Mr Baralt that his position was that the effect of the 31 March 2021 agreement and 6 July 2022 revision was that he was in fact “contractually due £186,650”. The position of the Claimant and that of the Respondent were now in conflict in that the Claimant considered that the trigger for the pay increase had been activated by the Claimant achieving £8M equity investment but the Respondent did not accept that the trigger for the pay increase had been activated.
23. The Respondent contends that in the course of correspondence and negotiations over this salary issue, the Claimant acted ‘aggressively and in a manner unbecoming of his position and status, expressing his lack of trust for the Respondent’s Board, and the working relationship between the parties became increasingly strained.’ Further the Respondent contends that although the Claimant was aware that the Respondent was going to run out of cash, in his negotiations the Claimant did not act in a manner that recognised that the Respondent had a “very limited cash runway” needing to secure new and immediate funding.
24. Mr Baralt was aware from the start of his appointment that the Claimant and the Respondent were not in agreement as to the Claimant’s remuneration. Mr Baralt was also aware that the Respondent required further funding. By about April and May 2023, the Respondent without further funding “*was going to run out of cash within months*”. Mr Baralt and the Claimant worked towards reaching an agreement on the Claimant’s remuneration. The Claimant and Mr Baralt were not able to reach an agreement on the Claimant’s remuneration. Mr Baralt did not accept the Claimant’s position that the trigger for a salary increase contained in the 31 March 2021 and 6 July 2022 letters had been activated.
25. The issue of the Claimant’s remuneration had the effect of destroying the Claimant’s relationship with the Respondent. In his witness statement Mr Baralt speaks of his efforts to find a resolution.
- 9 ...even before I had formally started in my role, he invited me to get involved with the Respondent’s Remuneration Committee (RemCom), and to help him in dealing with the board. He was trying to address issues with his salary, and wanted an increase.
10. At the time, he said to me that he was not expecting too much, and that he would take whatever the Respondent gave him, and even noted that the business was more important than his personal

² This offer like all previous offers also included further terms relating to matters such share options for simplicity I refer only to the baseline salary.

situation. I thought that was exactly how a CEO should behave.

26. However things changed and by June 2023 Mr Baralt had come to a different conclusion.

14. In short, after asking for my help, together with the RemCom, I did secure him a better offer, which he outright rejected. I was also shocked at how increasingly aggressive and antagonistic he was with everyone about the issue. His demands continuously escalated and every time I thought we were getting him what he had asked for he would revert with further, ever increasing demands.

...

17. However, the issue did not resolve, and it started to take up more and more of my time, particularly after late March 2023, when the Respondent confirmed that the Claimant had not met the triggers for a salary increase in accordance with the letters to him from the RemCom in March and July 2021 (see pages 398/400 and 401/403) and that he would remain on his existing salary (see pages 621/641).

18. From that point on, however, the issue of the Claimant's salary, and the disagreement between the parties, intensified, and it became more draining as it took up more and more time. Bearing in mind I was only supposed to work for the Respondent on average one day a week, it was taking up all of my time and drawing me away from other duties, but it was also drawing much of the Claimant's focus as well, to the detriment of his other responsibilities, which I highlighted to him on a regular basis. His approach was so antagonistic that it was destroying the relationship between the parties.

27. In his oral evidence Mr Baralt was emphatic. He stated in answer to questions from the Claimant that:

"Every time I came back to you with a better offer you asked for more, you wanted more salary, you wanted to back date, it became an all encompassing issue. I wanted to work with you I tried my best. I gave you a phenomenal offer you rejected it you threw it in my face the relationship broke down not only with me but with ... the rest of the board.. I really wish it would have worked out. I joined because of you, partly because of you,... I gave you package in excess of even what was contemplated back then and instead of saying 'thank you Willem lets move on, lets go fund raising,' I spoke with you about this all the time. I said lets draw the line in the sand and move on this company had weeks of cash left. And all you can do is bring up time and again how big an

issue it was whether it was Equity or not who cares I gave you a package in excess of that.”

28. The Respondent makes other complaints about the Claimant's performance and conduct. The evidence before me does not justify a conclusion that what concerns there may have been about the “*strategy for the company*’, and the Claimant’s alleged ‘*disregard for colleagues’ and Board members’ opinions where they did not match his own*” were serious issues of concern. The Respondent was well aware of the Claimant’s idiosyncrasies and was willing to tolerate them because of his positive attributes. There were also allegedly concerns about the Claimant’s conduct when dealing with investors such matters were not addressed with the Claimant by the Board. There may well have been some concerns about strategy or the Claimant’s conduct however the fact that these matters were not raised with the Claimant by the Board before the meeting in which the Claimant’s employment was terminated in my view leads to a conclusion that they were not sufficiently serious to merit the Board taking any action based upon them alone. They were however part of the overall picture that led to break down in the relationship of the Claimant with the Respondent.
29. The Respondent was concerned about the Claimant’s ability to attract and secure investment that would secure the continued operation of the company and that insolvency of the company was a real possibility. It was the difficulty in arriving at an agreement relating to the Claimant’s salary together with the conclusion that the Claimant deterred potential investors from investing, the threat to the existence of the company that resulted, in the Respondent concluding that the working relationship between the parties had broken down, and that they no longer held trust and confidence in the Claimant to perform his role as Chief Executive Officer.
30. By June 2023 the Claimant and Mr Baralt had not been able to reach agreement on the Claimant’s remuneration. The Respondent’s offer of improved remuneration was withdrawn and on 12 June 2023 the Claimant was informed that he would remain employed on the basis of the terms of his service agreement and terms of the letter of 6 July 2022. It was made clear in the letter that the Respondent’s position was that the Claimant had not met the target and condition for a salary increase had not been met.
31. On 14 June 2023 there was a meeting of non-executive members of Board at which meeting the Claimant was subject of discussion and it was agreed that the Claimant would be dismissed.
32. On 15 June 2023 the Claimant submitted a grievance alleging a breach of contract by the Respondent in that it had failed to honour the agreement as to variations to the Claimant’s contract of employment which would have meant an increase in his remuneration. The Claimant had previously written to Mr Callum McClean complaining that the Respondent had

breached their agreement by not awarding the pay increases that had been agreed in the 31 March 2021 letter and the 6 July 2022 revision.

33. The Claimant was invited to attend a meeting on 16 June 2023 with Mr Baralt, also present was Mrs Lawrence-Lelitte. The meeting was by video. The meeting started with the Respondent inviting the Claimant to speak on a without prejudice basis. Those discussions were not fruitful and were soon terminated. I accept the evidence of Mr Baralt that it would have been abundantly clear to the Claimant when the without prejudice discussions had ended. This appears to be supported by the evidence of Mrs Lawrence-Lelitte.
34. I note the Claimant's concerns about the absence of a contemporaneous note and his criticism of the record of the meeting produced by the Respondent but I am not satisfied that there is a significant difference between the accounts of the Claimant and the Respondent to justify a conclusion that there is a serious risk of the notes of the meeting having been crafted after the event to support the Respondent as opposed to being a note of the meeting as recalled by Mrs Lawrence-Lelitte.
35. During the meeting the Claimant alleges that Mr Baralt told him that the Respondent would not be responding to the grievance submitted by the Claimant. Mr Baralt denies that this was said and states that he stated that it would not help going through those things.
36. The Claimant was informed by Mr Baralt during this meeting on 16 June 2023 that his employment was being terminated. The Respondent did not follow any procedure in coming to the conclusion that the Claimant should be dismissed, it had been discussed and agreed by the board on 14 June 2023 and announced to the Claimant on 16 June 2023.
37. The Respondent sent a letter to the Claimant dated 19 June 2023, the first working day after termination, confirming his dismissal with immediate effect, with a payment in lieu of notice. In the letter the Respondent stated that the reason for dismissal was breakdown of trust and confidence. The Claimant wrote to the Respondent stating that that his dismissal was unfair because he had been dismissed without any procedure having been followed, he had been dismissed for raising a grievance and alleging that the Respondent had said they would not respond to his grievance.
38. The Respondent replied stating that it would respond to the Claimant's grievance after it had been investigated and that they would respond in writing, as requested by the Claimant.
39. The Claimant appealed against his dismissal in a letter dated 23 June 2023. The Claimant was informed that the Respondent would investigate the appeal and the grievance together because there was a significant overlap between them. The appeal was considered by Mrs Sarah Small (VP Finance).

40. Mrs Small considered the Claimant's appeal and also the further letters raising grievance sent to the Respondent following the dismissal as the matters appeared to her to be linked; the grievances and the appeal were dealt with together. Mrs Small concluded that the Claimant's dismissal was because there had been a breakdown in the relationship between the Claimant and the Respondent; that the decision to dismiss the Claimant had in fact been taken before the Claimant raised his grievance and not because of it. Mrs Small did not find any evidence to support the Claimant's appeal or grievance.
41. A feature of the Claimant's appeal was that the Respondent had not followed the ACAS code of practice. Mrs Small concluded that the Respondent's disciplinary and performance procedures did not apply because the Claimant was dismissed because of a breakdown in the employment relationship. Mrs Small stated that the Respondent's understanding was the ACAS code did not apply to the Claimant's situation. Mrs Small did not consider that it would have been appropriate to follow a protracted procedure before dismissal of the Claimant.
42. Mrs Small rejected the Claimant's complaint that the dismissal took place in the course of without prejudice discussions she considered that the without prejudice discussions had concluded and the parties moved to open conversations before the Claimant was dismissed.
43. As referred to above, it is accepted that the Claimant raised a grievance on 15 June 2023. The grievance was addressed by Mrs Lawrence-Lelitte. The grievance was investigated and rejected, and the outcome was confirmed to the Claimant in a letter dated 4 July 2023.
44. Mrs Small also considered some matters raised by the Claimant in respect of matters occurring after the Claimant's employment had been terminated relating to the announcement of the termination of the Claimant's employment and concluded that announcements made were factual and appropriate.

Law

45. An employee has the right not to be unfairly dismissed by his employer (section 94(1) Employment Rights Act 1996).
46. In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2) of section 98 ERA, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

47. The reason must be of a kind such as to justify the dismissal of an employee holding the job in question. As an example, following a successful company takeover different consideration can apply in the dismissal of a chief executive in contrast to a secretary or storeman, in the case of a chief executive dismissal might be SOSR justifying dismissal where with the other employees it would not be.³
48. The reason must be a substantial reason not frivolous or trivial; and must not be based on an inadmissible reason such as race or sex. The employer must show that the substantial reason for dismissal was a potentially fair one.
49. The Tribunal must decide whether the employer acted reasonably in dismissing for that reason (section 98(4)).
50. The Tribunal has to decide the fairness of the dismissal by asking whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt.
51. To amount to a substantial reason to dismiss, there must be a reason that could justify dismissal.
52. "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be beliefs held by him which cause him to dismiss the employee. If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason."⁴ The tribunal must look at the set of facts, or set of beliefs, which caused the Respondent to dismiss the Claimant.
53. Once the reason is established the tribunal must then consider whether it justifies dismissal, this is done by the tribunal's overall assessment of reasonableness. It is after the substantial reason for dismissal has been identified that the fairness of the dismissal must be considered.
54. In this case the substantial reason for the dismissal relied on is that the trust and confidence necessary for the employment relationship to function has broken down irremediably. A disagreement about salary and bonus does not necessarily result in a breakdown of trust and confidence so as to amount to SOSR, however the manner in which such a dispute is conducted could amount to a breach of trust and confidence.⁵
55. If there was an irremediable breakdown of trust and confidence that is capable of forming a substantial reason of a kind such as to justify the dismissal of the employee.

³ Cobley v Forward Technology Industries plc 2003 ICR 1050

⁴ Abernathy v Mott, Hay & Anderson [1974] IRLR 213

⁵ Handshake Ltd v Summers EAT 0216/12

56. Tribunals are required to take it into account, where it is relevant, the ACAS Code of Practice and an unreasonable failure to follow its recommendations may result in an adjustment of compensation of up to 25 per cent following a successful tribunal claim (sections 207 and 207A Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A).
57. The Code states that it applies to disciplinary issues relating to 'misconduct' and 'poor performance'. It does *not* extend to redundancy dismissals or dismissals on the non-renewal of a limited-term contract. It is the substance of the reason for dismissal, rather than the label placed on it, that is important in determining whether the Code applies. In dismissals based on SOSR the Code has been held to apply⁶ and also not to apply⁷, to determine whether it applies requires a focus on whether the procedure leading up to dismissal was disciplinary in nature. If it was the Code applies if it was not the Code will not apply. A conduct dismissal cannot be relabelled and escape the requirement of the Code.
58. The tribunal may reduce basic award where there is conduct of the complainant before dismissal that was such that it would be just and equitable to reduce the amount of the basic award (section 122(2) ERA). Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding (section 123(6) ERA). Contributory fault may be present in cases involving a breakdown in trust and confidence for which the employee is, at least, partially to blame.

Claimant's submissions

59. The Claimant contends that the convertible loan note of £2M was in fact equity, and therefore the Claimant had met the conditions for a pay increase as set out in the agreement recorded in the letters of the 31 March 2021 and 6 July 2022 ('the letters'). The Claimant says that the economic substance of it was that it was equity regardless of the fact that it was called a loan. The Claimant in addition to his own opinion relied on the fact that the Respondent's accountants who in preparing the Respondent's accounts considered it equity and also that it was the view of an internationally recognised accounting firm that the convertible loan notes was equity. The Claimant says that the Respondent failed to honour its obligations as set out in the said letters and was thus in breach of contract. That was the reason for the loss of trust on his part and because of that the dismissal of the Claimant for any breakdown of trust arising from the failure to reach agreement on the Claimant's salary could not be a SOSR, alternatively that it was not reasonable for the

⁶ Hussain v Jurys Inn Group Limited EAT 0283/2015, where the dismissal was based on breakdown of mutual trust and confidence.

⁷ Phoenix House Limited [2017] ICR 84, where dismissal was based in a breakdown in the working relationship.

Respondent to dismiss the Claimant for a reason arising out of its own breach of contract.

60. The Claimant says that the agreement contained in the letters was badly drafted because 'equity investment' is not a term of art and there is no definition of what is meant by it in the letters. The term 'equity loan' is not a term of art either and so the Claimant says that is to be considered as included in any definition of an equity investment.
61. In those circumstances the Claimant says that "*the case law is that if an employer enters into a contract with an employee where the employer drafts the terms, if there is ambiguity, the benefit falls to the employee. I'm an employee so it was badly drafted that's not my fault I didn't draft it.*"
62. Anticipating the Respondent's reliance on Matthews -v- CGI [2024] EAT 38 the Claimant states that, unlike Matthews, where the employer made sustained and genuine efforts over a period of time that's not the case here because there was a definitive fact (i.e. that the Claimant met the conditions for a pay increase) that was ignored. The Claimant says that in this case the employer creates the breakdown by breaching the contractual bargain and ignoring the grievance and so cannot invoke Matthews to say, 'the relationship is beyond repair procedure would be futile' as it would reward the employer's own misconduct.
63. The Claimant says the Respondent and its auditors treated with convertible loan note was equity and thus it should be accepted that the £8 million threshold was met by the Claimant and the uplift was due and Respondent refused honour it. The Claimant raised a grievance and was then dismissed within 24 hours for having done that.
64. The Claimant also contends that even if some concerns amount to some other substantial reason existed, the dismissal was outside the range of reasonable responses.
65. The Claimant says that the Respondent was in breach of contract for failing to pay the contractual uplift.

The Respondent's submissions

66. The Respondent says that the case in essence is straight forward and boils down to (i) what was the intention of the parties in the 31 March 2021 letter; What did they intend the Claimant needed to get to increase his salary; and (ii) Was it in the band of reasonable responses for the Respondent to dismiss the Claimant in those circumstances.
67. The Respondent says that even the Claimant was accepting that there was a breakdown in the relationship between himself and the Respondent. The Respondent says that it was clear that the expectation of the parties was that the Claimant would get an equity investment and that a loan

would not satisfy that. The Respondent states that the equity loan was a loan, a convertible loan, however a loan nonetheless. Nothing had happened to convert it. It might in the future become equity and the accounts record it as an 'equity loan' because of the terms that say it might become equity in the future. No one had in mind a loan when they agreed the terms of the 31 March 2021 letter. There is no ambiguity everyone was expecting and the Claimant was incentivised to get equity investment.

68. Of the Claimant's contention that there is some legal principle that any ambiguity should be construed against the Respondent (employer). The Respondent says that it cannot apply in this sort of situation where the Claimant is arguing to be paid something. The Respondent says that it would be perverse to say that any ambiguity should be construed against the person that might have to pay something. That would just give any employee a right to as much money as they wanted if they would identify some ambiguity. The Respondent says that the Claimant needs to prove that the intention of the parties was that he would be rewarded for getting a loan. The Respondent says that was not the intention the parties. The Respondent says that it was reasonable for the Respondent to interpret the agreement in the way that it did.
69. The Respondent relies on the contention that it tried hard to resolve the issue by making a fully thought through comprehensive offer giving the Claimant a pay increase, future pay increase, and other rights to future remuneration, the Claimant turned it down. The Respondent states that the Claimant did so because he wanted to maintain his need to win on this point and could not move on, because he would not move on the parties remained in this situation.
70. The Respondent says that the test is whether, at the point at which the Respondent decided to dismiss the Claimant, there was any alternative; was it unfair for the Respondent to decide to dismiss the Claimant. The Respondent relies on the various concerns about the Claimant's conduct and performance. There was every chance the company would go into administration in a month. The Relationship between the Claimant and Mr Baralt, the Chair, had broken down.
71. The Respondent points out that the Claimant did not take issue with the fact that there was a without prejudice discussion the purpose of which was to try and agree a termination. The Respondent says that the Claimant accepted in evidence that it was reasonable to end the relationship because of the way it had broken down, his position, it says, was that it was not his fault that it had broken down. The Respondent says that the dismissal was fair regardless of fault but in any case it was not the Respondent's fault it went to great effort to try to resolve the dispute about the Claimant's pay to move forward together; the Claimant refused to engage with that instead demanded what he thought he was entitled to historically.

Conclusions

Breach of contract

72. I am satisfied that there was not a breach of contract. The Claimant seeks to rely on a principle of construction of contracts to say that the agreement in the letters should be construed in his favour. I am not satisfied that this is a case where issues of construction apply. The Claimant says that letters were ambiguous because they made reference to equity investment and that the term was sufficiently wide to potentially include the convertible loan or equity loan of £2M.

73. However, in my view the position is clear in that the £2M convertible was not an equity investment, it was a loan. The fact that it was described as a equity loan in the accounts in my view does not change the nature of it. The £2M was a convertible loan that at the relevant time had not been converted into equity, that contingency had not occurred and so the loan remained a loan. The evidence appears to me to indicate that the £2M coming from Avingtrans was intended to be a loan because of the financial position of the Respondent and the possibility of the Respondent going into administration Avingtrans would have wanted to protect their position by making a loan to the company rather than an equity investment.

74. The parties could not have considered that a loan in such circumstances would be the same as an equity investment for the purposes of the determination of whether the Claimant had met the requirements to raise £8M equity investment. If at the relevant time the convertible loan had been converted into equity the requirements of the letters would have been met but it had not so they were not met. By its nature the convertible loan is not the same as an equity investment until it is converted to equity.

75. As the conditions for a pay increase had not been met at the relevant time before the Claimant's dismissal, the Respondent was not in breach of contract as evidenced by the letters at the time of the Claimant's dismissal.

Unfair dismissal

76. The evidence shows that the Claimant was dismissed during the meeting on 16 June and that the dismissal was confirmed in the letter of the 19 June 2023.

What was the reason for the Claimant's dismissal?

77. The issue of the Claimant's salary, and the disagreement between the parties, intensified over time with the effect that it took up more and more time from the Claimant and Mr Baralt to the detriment of other responsibilities. Mr Baralt considered that the Claimant's approach was antagonistic, in circumstances where the Claimant had been made "a

phenomenal offer” which he rejected *“threw in my face”*. Mr Baralt considered that the relationship with the Claimant had broken down because the Claimant had not only refused the offer but had been unable to draw a line in the sand in respect of the pay issue and say *“Willem lets move on, lets go fundraising”* in circumstances where the Company had *“weeks of cash left”*. This position led Mr Baralt to consider that his relationship with the Claimant had broken down. The board was in agreement and this resulted in a decision to dismiss the Claimant.

78. The reason for the Claimant’s dismissal was the breakdown in the relationship of the Claimant with the board principally in relation to the position relating to his salary but not only in the failure to agree the pay increase issue but the fact that it resulted in Mr Baralt and the Claimant not working effectively together to fund raise in circumstances where the need to raise funds was critical with the Company facing the prospect of going into Administration having only weeks of cash left. The reason for dismissal was a substantial reason.

Was the dismissal fair?

79. The Tribunal must decide whether the employer acted reasonably in dismissing the Claimant for that reason. Did the dismissal fall within the range of reasonable responses that a reasonable employer might adopt.

80. The decision to dismiss the Claimant was made by the Board on 14 June 2023, before the Claimant raised his grievance. I reject the Claimant’s contention that either the decision to dismiss or the timing of his dismissal was determined by the fact that he raised a grievance on 15 June 2023. Once the decision had been made that the Claimant was to be dismissed it was a question of carrying out the appropriate process to bring this about.

81. The Claimant and Mr Baralt were intended to work together but they had arrived at the situation where the Board and Mr Baralt felt that they could not work together dismissal of the Claimant in those circumstances was justifiable. The Claimant had come to the conclusion that he did not trust the Board, such a position is in the long term untenable, in the short term for this Company it was life threatening because the Company needed to raise funds or fail: the energies of Mr Baralt and the Claimant were being diverted away from that pressing issue.

82. The Claimant’s position, as set out in his grievance letter of the 15 June 2023, was that the Respondent was in repudiatory breach of its employment contract with the Claimant and was damaging trust and confidence in the relationship by its failure to, in his view, honour its obligations in the 31 March 2021 letter. The Claimant had stated to Mr Baralt that he does not trust the board. The Claimant in his evidence to the Tribunal stated that *“trust and communication”* had broken down. In concluding his evidence the claimant stated that:

“It is a fact that the trust broke down what we need to look at is the ultimate cause- the ultimate cause is not the money per se, the absolute quantum, its the fact that an obligation was made and the obligation was not adhered to. That is the fundamental cause of the break down, realistically it is the cause of a breakdown in any relationship.”

83. The Claimant’s position at the time and at the hearing was that the relationship had broken down. While the Claimant considered that the fault for that lay with the Respondent the Claimant does not dispute that the point had been arrived at where his employment could not continue he stated that his continued employment had become untenable.

84. The Claimant considers that the dismissal was unfair because the Respondent was at fault because of their breach of contract and because they failed to follow any fair procedure.

85. For the reasons set out above I cannot conclude that the Respondent was at fault because of breach of contract.

Does the ACAS code apply in this case? Was there a failure to follow a fair procedure?

86. The Claimant’s contention that the Respondent failed to follow any procedure in dismissing him is in my view correct. The Respondent failed to follow the ACAS Code in bringing the Claimant to dismissal and did not attempt to follow any procedure that the Claimant may have been entitled to be dealt with under by the Respondent in a case of capability or conduct.

87. It is noted that the Claimant also expressly stated that he felt that that there had been a breakdown of trust and confidence between the parties. The Claimant agreed that Mr Baralt had said to him that his position had become untenable and he did not disagree with that position in his evidence: I am satisfied that the Claimant must have known that his position as an employee of the Respondent had become untenable.

88. It is the Respondent’s position that, in light of those agreed and accepted circumstances, it needed to act quickly to bring the employment relationship to an end given the Claimant’s role as CEO, and the Respondent’s financial circumstances at the time. The Respondent required a CEO in position at that critical time who would be focussed on addressing the needs of the business, and a prolonged internal dispute resolution procedure would not, in the reasonable view of the Respondent, have facilitated that position and would have further threatened the Respondent’s ongoing viability.

89. The attempts to resolve issues with the Claimant, particularly in relation to his terms and conditions of employment and remuneration, had gone on

for a long period of time. The Respondent had made a number of offers to the Claimant which the Claimant had rejected. The working relationship between the parties had irretrievably broken down.

90. The Tribunal is required to take it into account where it is relevant any unreasonable failure to follow the recommendations of the ACAS Code and it may result in an adjustment of compensation of up to 25 per cent following a successful tribunal claim. The Code applies to disciplinary issues relating to 'misconduct' and 'poor performance'.
91. The Respondent states that the Code does not apply in this case because there was a dismissal for some other substantial reason. The label attached to the dismissal by the parties is not determinative it is necessary to have regard to the substance of the reason for dismissal, rather than the label placed on it, to determine whether the Code applies: was the procedure leading up to dismissal was disciplinary in nature or to do with capability?
92. The Respondent did make complaints about the Claimant's performance and conduct during the hearing, however my conclusion is that the evidence before me does not justify a finding that what concerns there may have been about the Claimant's conduct or performance were not sufficiently serious, at that time, for the Board to consider taking any action based upon them. The reasons for dismissal were not covered by the recommendations in the ACAS code.
93. While the Respondent argued that other members of the Board (other than Mr Baralt) and the senior executive team grew increasingly concerned about the behaviour of the Claimant and his relationship with the company, his colleagues within the senior executive team and with potential investors. However this was not borne out by the evidence. The Claimant's colleagues all spoke of him in terms that showed that the Claimant was passionate and inspiring but also flawed as a leader. That the Claimant's approach to management appeared to leave colleagues with a view that you either were with him and supported or not with him and potentially subject to his ire. There was no evidence that suggested at all that there was ever any consideration of addressing his management and leadership of his colleagues as a conduct issue in any disciplinary process. If there was concern among the Board about the Claimant's behaviour it was not manifested. Additionally in relation to performance, if the Claimant had agreed terms with Mr Baralt his employment would have continued.
94. Taking account of all the circumstances of this case I am satisfied that the Respondent acted reasonably in treating the breakdown in the relationship with the Claimant as a reason for dismissal it was a fair reason. For the reasons set out the reason was substantial. There was a need for urgent action in circumstances where there Respondent without raising funds would have been heading for administration. There was no way back from

the conclusion of dismissal once it was determined that agreement on the pay issue could not be resolved. Dismissal was in all the circumstances within the range of responses of a reasonable employer.

Approved by:

Employment Judge Gumbiti-Zimuto

30 January 2026

JUDGMENT SENT TO THE PARTIES ON
12 February 2026

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.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/