EMPLOYMENT TRIBUNALS

Claimant: **Mr M.Booth**
Respondent: **Global Media Group Services Ltd**

London Central by CVP **23, 24 July 2022**

Employment Judge Goodman

Representation:
Claimant: in person
Respondent: Ms A. Ahmad, counsel

JUDGMENT

1.The unfair dismissal claim fails

2.The breach of contract claim fails

REASONS

1. The claimant was employed by the respondent from 25 June 2007 until dismissed by reason of redundancy on 31 August 2020 from his post as area business director (ABD). He has brought this claim of unfair dismissal on the basis that he was unfairly selected for redundancy. There is also a breach of contract claim relating to holiday pay on termination.

2. The claimant agrees the respondent's need for managers had diminished, in other words, that there was a redundancy situation. He does not dispute that it was appropriate to select from the pool of ABDs. His case is that there was unfairness in the following ways:

   (1) The selection criteria were subjective
   (2) They were applied unfairly. In particular, he had recently been assigned a challenging area, and had inflated targets to meet, and his scores should have been adjusted to take account of this
   (3) The line manager who scored him was had previously been found incompetent; in closing he modified this to her actively seeking to remove him from the business. He says the company lied to him when saying she

had not been disciplined over this
(4) They did not follow their own procedure, in particular (a) there was no separate meeting with the manager who scored him, and (b) the person conducting consultation meetings was not his line manager
(5) Having asked for a meeting to discuss his scores he was not offered a postponement related to his wife's ill health and was made to take written feedback instead
(6) The validating manager either did not validate his scores, or if she did, she was not a suitable person as she did not know him
(7) Consultation was not meaningful
(8) The appeal was a sham. Those selected to stay were told this before his appeal was heard

3. On termination he received 6 months pay in lieu of notice. The contract claim is that salary for the notice period should have included contractual holiday pay, and not be limited to basic salary.

Evidence

4. To decide the claim, the claimant heard evidence from the following:

Hugh Murray, managing director, local sales, who conducted 3 consultation meetings with the claimant
Anita Wright, regional managing director, the claimant's line manager, who led a team of 7 ABDs in the Midlands and north-west. She scored her team against the redundancy criteria.
Katie Bowden director commercial audio, who heard the claimant's appeal
Jessica Looker, from human resources, who assisted Hugh Murray in the consultation process
Melvyn Booth, the claimant.

5. The tribunal had a bundle of documents of 314 pages.

6. The tribunal , at the claimant's request, to an untranscribed 14 minute dashcam audio recording of a phone conversation he had had with a Birmingham region ABM about allocation of areas there, critical of Anita Wright, his line manager. The claimant's belief in his line manager's incompetence, previous discipline and malice arose from this conversation. The date of the recording is unknown, but its content indicated it took place after the claimant had been informed of his scores but before dismissal. As his interlocutor was unaware the recording has been made public, and has not given evidence, in this decision she is referred to as A.

7. At the conclusion of the evidence, each side made a submission, the claimant going second. As there was not enough time to give a reasoned judgement and then take evidence on remedy, remedy was adjourned to a hearing on 20 October 2010 if required.

Relevant law

8. Section 98 of the Employment Rights Act 1996 provides the following are potentially fair reasons for dismissal: conduct, capability, statutory obligation, redundancy, or "some other substantial reason justifying dismissal". It is for the employer to establish the reason for dismissal.

9. A dismissal by reason of redundancy is defined in section 139 of the Employment Rights Act as where:

> the dismissal is wholly or mainly attributable to—
> (a) the fact that his employer has ceased or intends to cease—
> (i) to carry on the business for the purposes of which the employee was employed by him, or
> (ii) to carry on that business in the place where the employee was so employed, or
> (b) the fact that the requirements of that business—
> (i) for employees to carry out work of a particular kind, or
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
> have ceased or diminished or are expected to cease or diminish

10. If a potentially fair reason (such as redundancy) is shown by the employer, section 98 (4) provides that it is the employment tribunal to determine:

> "whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
> (which)
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> (b) shall be determined in accordance with equity and the substantial merits of the case".

11. The tribunal must not substitute its own view for that of the employer, provided the employer's action was within the range of responses of a reasonable employer, and this principle applies both to findings on whether the decision itself was reasonable, and on whether the process adopted was reasonable – **Foley v Post Office (2000) IR LR 82,** and **Sainsbury's Supermarkets Ltd v Hitt (2002) EWCA Civ 1588.** This applies in redundancy cases as any other – **Nicholls v Rockwell Automation Ltd UKEAT/0540/11/SM**. The tribunal must not re-mark criteria for itself, but just consider the reasons why the respondent allocated the marks it did, and "ask whether those reasons were reasonable".

12. In redundancy cases, a tribunal may, in relation to the fairness issue, consider the pool of employees considered for redundancy, how the criteria for selection for redundancy within that pool are identified and applied, how employees are consulted about redundancy, and what consideration is given to alternative employment, but should remember not to decide for itself whether an alternative would have been fairer, but only whether the employer's decisions were within the range of conduct of a reasonable employer – **Williams v Compair Maxam Ltd (1982) IRLR 83**. When considering whether criteria are appropriate and whether they have been applied objectively, tribunal should bear in mind that in making assessments against criteria there is inevitably a matter of judgement but that "does not

mean they cannot be assessed in a dispassionate or objective way" - **Mitchells of Lancaster (Brewers) Ltd v Tattersall UKEAT/0605/11/SM**. On consultation, in **Polkey v AE Dayton Services Ltd (1988) AC 344** it was said an employer "will normally not act reasonably unless he warns and consults any employees affected…"; but what consultation is required will depend on the facts of the case, and the tribunal should consider the reasonableness in the circumstances.

13. On alternative work, an employer is generally obliged to take reasonable steps to look for alternative work, but is not required to take every conceivable step possible - **Quinton Hazell Ltd v Earl (1976) IRLR 296,** and **British United Shoe Machinery Co Ltd v Clarke (1977) IRLR 297.**

14. Where a dismissal is found unfair because of shortcomings in the process by which the decision was reached, when it comes to remedy, the tribunal can consider what difference a fair procedure would have made to the outcome – **Polkey**.

Findings of Fact

15. The respondent is the largest commercial radio company in Europe, with both radio and digital streams, including such well-known brands Heart FM, Capital Radio, LBC, and Classic FM.

16. The claimant's job as area business director was to manage a team of account managers plus a creative manager, selling advertising for digital and radio within the Lancashire and Cumbria area. He had taken over this area in April 2019 following an earlier reorganisation. Before that, he was managing director Wales, managing the North Wales team, with oversight of the south Wales team.

17. His new area derived from a business purchased by the respondent in 2019. Some staff had left, others found it difficult to adapt to respondent's business methods, and the claimant had difficulty recruiting new staff. There was a difference of opinion with his line manager Anita Wright on whether one of the new starters should be let go, or whether he should be coached to perform better. There was also an episode where it turned out that advertising income expected when an advertisement aired had already been booked in a previous accounting period, and could not be counted again. The amount involved was just under 10% of the area target. There were also some difficulties in forecasting income. Managers were expected to supply target income for the end of each week, and another target for income at the end of each month. The monthly figure was more reliable because it ironed out the volatility of weekly forecasts where a day's delay in payment made a difference. They are also expected to supply information about pipeline (expected orders and payments projected into the future). The claimant's end of year assessment shows his line manager complaining that he was consistently revising his monthly targets downwards halfway through the month. The respondent's case is that an experienced manager will get to know which of his team were over confident and which realistic, so as to

make a judgement about targets. Nevertheless, generally the claimant worked extremely hard with his team.

18. The global pandemic led to shutdown in March 2020 and in turn the closure of local businesses radically reduced the amount of advertising income. Many managers, including the claimant, were furloughed. The respondent decided that they had to make extensive staff cuts to maintain profit. It was a business wide reconstruction. The number of areas was to be reduced and 18 regional sales managers were to be substituted for 33 ABD's. All are There was a collective consultation with employee representatives about the criteria and the procedure. Modifications were made as result: the end of year performance score was not to be included, because recently acquired businesses have different assessment systems. The consultation concluded on 31 July 2020.

19. A document describing the redundancy process was placed on a private group on the respondent's SharePoint accessible to staff at risk on 22 July 2020. The hearing bundle contains the 4 pages that deal with consultation meetings. It says: "for those that are in a redundancy pool, the individual consultation meetings will be an opportunity to discuss your selection criteria score and raise any objections to the basis of your provisional selection for redundancy." The claimant maintained that the process included separate discussions with the line manager who had done the scoring, that this had been outlined in the meeting, and that he had not been sent the relevant document. The respondent simply denies that this was a provision of the process. The tribunal prefers the evidence of the respondent, in particular the SharePoint document.

20. The consultation envisaged scoring to be done by the line manager, who would also conduct the consultation meetings. The claimant returned from furlough for 2 days of training so that he could be ready to assess his own team. The respondent then realised there was not enough time for the different line managers to conduct all the consultation meetings required, and so instead the ABD's were scored by their own line managers, but then met Hugh Murray, who line managed their line managers, for the consultation meetings. Had this change not occurred, the claimant would have in practice been able to discuss scores with his line manager at a consultation meeting if not at a separate meeting.

21. Once the scores were assessed by the line managers, they were to be validated by another manager of the same grade, Michelle Johnson, the training director for local sales, on the basis that she attended weekly team calls and so would be familiar with all the ABDs in Local Sales, the team headed by Hugh Murray. Anita Wright's evidence was that she discussed the scores for the 7 people in her team with Michelle Johnson, but she could not recall the detail of discussion about the claimant.

22. The selection criteria were: performance, skills, behaviour, qualifications, training, experience, reliability and leadership for the period April 2019 to

March 2020.

23. These dates did not include any period of furlough. The claimant was reassured on this when he queried it on 23 July 2020.

24. One employee, S, had been on maternity leave for the relevant period. Exceptionally, she was to be assessed on her 12 months prior to starting her leave.

25. On 27 July Jessica Looker in HR so consultation notes giving background and context to his performance in the relevant period, the context being the historic underperformance of his new territory which had to be built from the ground up. It included substantial detail and a number of emails demonstrating how you'd worked with his team. Jessica Looker sent this to Anita Wright straightaway "for you to incorporate any relevant info (facts and examples) into his selection form please". Ms Wright says that she was in any case "mindful of the particular challenges" of the claimant's territory.

26. The score sheets marked team members on the scale 1 to 5 on each criterion. A score of 5 is outstanding, 4 is great, 3 is meeting expectations, 2, has potential. The claimant got a 5 for attracting new business clients in line with expectations, 4s for strong understanding of audio brands and products, keeping things simple, focusing on the right outcomes, and for having a positive attitude. He had a 3s for achieving expected revenues across multiple product platforms, for working autonomously and driving continuous improvement, for strategic understanding of markets and clients, working well with support teams, for working with team members to reduce discount levels, and for adhering to credit policy. He got a 2 for managing revenue pipelines and ensuring committed forecasts are accurate and achieved, and another 2 for achieving the teams annual total revenue target.

27. The claimant's total score for skills behaviour qualifications training and experience was 46 and the potential 70.

28. He was also scored for time and attendance, ability to manage work commitments, trustworthiness and consistency, and got a 3 in each of these meaning consistently reliable. He got to (reliable) for consistent delivery on work and projects. This added up to a further 14 out of a potential 15 marks.

29. The leadership skills he got one "meeting expectations" for consistent fair people management, coaching team development, solution focused, managing high performing teams budgeting and forecasting, and to "great" remaining positive during change management. That meant 13 marks at a potential 20.

30. Miss Wright entered some detailed comments on why she had given the scores she had. She mentioned that he had reduced forecasts on many occasions in the year, he had worked with the team and it was seen as work in progress. Nevertheless "at malls level the expectation is clear and he

should be close enough to all the opportunities to ensure that forecasting is more accurate and could be delivered". She mentioned he had worked closely and weld credit control to mitigate problems caused by the previous takeover, a "complex and frustrating task" that is handled sensitively and pragmatically. She credits his wealth of experience and work to retain local business but have a reservation about not building collaborative relationships with other stakeholders in the region. He'd worked hard to build new business. He was reliable and trustworthy. A score that sessions were well delivered each week, but he did not deliver roadmaps on most wanted exercise to a consistent high standard. There was a detailed and glowing account of his ability to work with the new team but he thought his focus on the limited opportunities had "created a glass ceiling affected his team" and underlined their ambition. She also mentioned his focus on working on an exit strategy for the unsatisfactory new starter rather than coaching him.

31. On the list of 29 people in the RSM selection pool (the absence of another four was unexplained) the highest score is 101, the lowest 47. The lowest score retained in the business was 79. In the unsuccessful group, scores ranged from 76 to 47. The claimant scored 73, so he was second in the redundant group.

32. The claimant was invited to the 1st consultation meeting on 13 August. He was told that he had been unsuccessful. He asked to see the scores, and they were sent to him promptly. He was asked if he had investigate alternative roles on the website. The outplacement services were described. If nothing changed after the next 2 meetings, he would be redundant with effect from the end of the month.

33. On 16 August the claimant wrote back to Jessica looker challenging the matrix scores on the basis that the comments were "overtly subjective, self opinionated, inaccurate, and offers very little in the way factual justification or substantiation". Michelle Johnson did not know his skills capability or outputs. Further, he understood that Anita Wright had recently been disciplined following a grievance that had been upheld, and told to attend some people management training. She could not therefore the fit and proper person to complete the matrix.

34. He asked for "a full and detailed report outlining explanations for the scores given and a full review with changes to my scores to properly reflect my performance/contribution". The document he had submitted had been "completely ignored". He added some details in rebuttal, related the quality of his team, attempts to drive up revenue, and figures the recent new business, pasting in many emails to and from himself and the team.

35. Jessica sent this to Hugh Murray who then wrote to the claimant on seventeenth stating that it was false to say that Anita Wright had received disciplinary action. She is also the most appropriate and capable person to complete the form as she had been the line manager for a significant period of time. The claimant replied that his source was happy to provide evidence to

the contrary if the case went to court. Next day he added that a grievance had been brought against Anita Wright and HR had recommended he have additional training.

36. Also on 17 August he sent Jessica Looker a formal grievance alleging discrimination on the basis of age contrary to the Equality Act 2010. He complained of being assessed on Lancashire and Cumbria, rather than Wales, given this difficulty. His feelings of failure were aggravated by his family, as his wife was going through cancer diagnosis and treatment (something HR had been told about many months earlier). Jessica looker responded by saying "the process is that if someone has questions or issues regarding the selection form, then they should speak to the manager who completed the form in the first instance as they can prove provide less detail. We talk to Anita and she can take you through this tomorrow at 5 p.m.? The claimant confirmed that was convenient, but thanks looker spoke to Anita Wright it was not convenient and so an hour and a half later Miss Looker asked if he could do 10 AM the following day instead.

37. The claimant replied: "hi Jess, sorry, I'm busy tomorrow morning. As global wish to roll all of the consultation and not allow a meaningful appeal until the end of the process, I'm happy for Anita to provide a written detailed justification report if that helps". Miss Looker replied half an hour later: "Anita has been making notes in preparation for your call, so she is happy to provide these to you instead if that's your preference? She says she will finish them tonight as she is and consultation meetings with me all day, and will get them across to tomorrow morning?" The claimant did not reply to this email. His evidence to the tribunal was that it was the respondent who refused another meeting and insisted he take a written report instead. Neither side says that there was telephone discussion. On the evidence of the emails, the claimant simply said that the new time was not convenient, and did not ask for another time for the meeting. Instead, it was he who asked for it to be put in writing. The claimant explains that the second consultation meeting was due next day, and he felt under pressure because of his wife's treatment. That does not however support his insistence that it was the respondent who refused a meeting and insisted on written material.

38. On 19 August Jessica Looker responded to the grievance saying that the most natural forum to discuss the points was as part of the consultation process.

39. Later that day the 2nd consultation meeting took place. That morning the claimant had been sent Anita Wright's 4 page written explanation. Revenue and targets have been essentially populated. Most of the schools have been meeting expectations or great. She explained and team playing had not been "great" by reference to particular examples. She thought the 3 managing high performing teams was generous when his region achieved 75% of their annual budget, the lowest performance of all her teams.

40. At the meeting the claimant said the only outstanding issue was about the

ranking at the end of the process. On Anita Wright's information he had only skim read it and will come back to him once it digested properly. At id not seen any vacancies that interested him. There was an explanation of redundancy pay outplacement services and the well-being support. There was a further meeting on 2 August. The claimant said he had no further questions or comments, and it was confirmed his last working day of 28 August.

41. On 26 August he received a formal letter of termination.

42. On termination the claimant must pay the statutory redundancy payment of £10,491, 6 months pay in lieu of notice of £38,575, an expiration payment of 4 weeks salary, £6399, a further £2400 for company car allowance in lieu of notice, £2700 for employer pension during the notice period and full day's holiday and taken up to the date of his leave.

43. The claimant exercised his right of appeal by letter of 1 September 2020. The letter makes several points already made in these proceedings. In addition he complained there was not enough time to read Anita Wright's comments before the 2nd consultation meeting, that he had not been asked to lead consultation meetings with his own staff as he had been led to believe, that is an opportunity to have a conversation about matrix feedback because Hugh Murray that the meetings rather than the line manager. He added the point about holiday not being included for the pay in lieu of notice period. As before many emails were pasted into demonstrate the points he sought to make, and his spotlight assessment for March 2020.

44. Katie Bowden was assigned to hear the appeal. She deals with large clients, and had no contact with Local Sales. At the appeal meeting the claimant said that he had been "set up" as they were wanted to eliminate him from the business. The snoring should have been adjusted to allow for different territories. Anita Wright's comments were inaccurate and unfair and opinionated. There was a more detailed discussion about the challenges on the territories from the claimant's point of view, and Michelle Johnson's knowledge. The claimant stated that he understood the respondent wanted him out because he was the "oldest guy in the region, probably higher salary".

45. Katie Bowden replied on 2 October 2020. In 5 full pages she responded to the detail. Along this is a denial that he was either the oldest or best paid order either factor had anything to do with the decision. He was not entitled to holiday pay because he did not accrue holiday when he was not working. He was given an explanation of the switch from line managers to Hugh Murray for the consultation meetings. It would not have been fair to make allowances for a particular territory.

46. Just before the consultation period began, the claimant applied for a vacant post, head of select. He submitted his CV. He was subsequently interviewed by Hugh Murray. His score sheet is available. About 10 people applied. The claimant was unsuccessful. The preferred candidate had experience of

dealing with national businesses, the clients of the selected team, which the claimant did not.

47. We had some evidence about Anita Wright. The audio recording on which the claimant bases his assertion in mid conversation, so it is not possible to ascertain the public part of the conversation but claimant is talking to someone who complains about the allocation of work within the Birmingham region and that Anita Wright had preferred her friend and acted unfairly. The claimant can be heard cutting in saying “so I need to and Jane colluded,” and “she was looking after her mates”, and later: “Anita designed and orchestrated the situation”, inviting further comment from the other manager. The claimant denies he knew the conversation was recorded; if he had known it might well be thought that he was leading her. No mention of discipline is audible, or that Anita Wright had to undergo training. The other manager could presumably have been called to give evidence or make a statement but has not. The evidence of Jessica Looker from the HR records, and from Anita Wright herself, is that she has never been disciplined. Anita Wright says that the grievance is made about the process of allocation, but not about Miss Right personally. This right was interviewed as part of the process. Neither the grievance nor the appeal was upheld. Ms Wright was offered support because she found the process unpleasant, but did not take up the offer. She was not asked to retrain. The tribunal concluded there was no evidence that Anita Wright was not a competent or suitable person to carry out the scoring as the claimant’s line manager, or that the respondent had lied to him about this.

Discussion and Conclusion - Unfair Dismissal

48. Having made these findings of fact, the tribunal applies those findings to the relevant law in order to conclude whether the dismissal was unfair.

49. The criteria used to select who should be made redundant were appropriately objective. An employer is entitled to use criteria designed to ensure that he retains the best employees needed to carry on the business successfully. Of course there were elements of opinion in whether an assessment was, for example “great” or “meeting expectations”, but that not mean they were not suitable criteria for selection. The claimant has not demonstrated how any of the criteria were of themselves subjected. Several of covered the same ground as the annual performance assessment.

50. Reviewing the comments made by Anita Wright on the matrix and in her response to the claimant wanted to discuss his scores, it is noticeable that she is careful to give credit for the claimant’s performance, as most of his scores of 3 or 4 with only one 5 and two 2s. Her commentary praises him frequently. She is specific where she has reservations. The claimant criticised the assessment and these comments as demonstrating emotionalism and subjectivity.

51. Taken overall however, and comparing the claimant’s end of year assessment

(Spotlight) at the beginning of March 2020, her commentary related to observations about the claimant's performance with which he did not substantially disagree. Instead he tended to argue that he should have been given more generous scoring to reflect the particular difficulties of his team, and that the targets were unrealistic because of this difficulty. The respondent's evidence was that targets related to the size of his team, and to the pipeline information and forecasts inputted onto the SalesForce programme used to set targets. The claimant says that he should have been given special treatment because of the difficulty of his territory. There are obvious reasons why the candidate who was on maternity leave had to have different treatment, because she had no performance in the relevant period to be assessed. In effect the claimant is asking not for objective assessment against the criteria but for a particular subjective assessment for him – special treatment. Miss Wright knew of his difficulties, gave the claimant credit for considerable effort in working with the region. She did not criticise that he did not attain revenue, but rather that his forecasting against targets was inaccurate, and that he did not complete the roadmap. These shortcomings are not particular to that region.

52. In the eyes of the tribunal these demonstrate sufficiently that she was objective, and related her conclusions to evidence.

53. Turning to the claimant's points about the process it is not demonstrated that he should have had a separate meeting with his line manager, rather than consultation with a senior manager. It was a drawback that their change in the plan as to who would conduct the consultation meetings meant that Hugh Murray would be at a greater distance to the detail of the claimant's performance. The respondent recognised this with their offer to the claimant of a discussion with Anita Wright. The only reason why this did not go ahead was that the claimant did not ask for one when the time offered was unsuitable for him, and it is plain from the emails that it was the claimant who asked for written explanations, both when the meeting time was when he had to accompany his wife to hospital, but also earlier, before the scoring had been done this was provided very promptly, giving details related to the information here provided. If there was no face-to-face discussion with his line manager about the scores, it was not because the respondent had refused it.

54. As for Hugh Murray not being his line manager, the process provided the senior manager. Although it was indicated the line manager carry out the meetings, it does not appear unfair that Hugh Murray should conduct the consultations for 33 candidates. He would have some knowledge of each of them, particular knowledge of the ability of the line managers who had scored them, and any lack of knowledge of an individual would apply across the pool. He was probably better able to assess the merit of the claimant's objections to the scoring than any independent appeal manager.

55. As for Michelle Johnson not being the right person to validate his scores, it is not clear who else was. She was sufficiently involved in the work of the team to provide an adequate check on subjectivity, and was not managed by Anita

Wright. There is no reason to think she did not review the school was as Anita Wright says she did. The lack of signature of either Anita Wright or Michelle on Johnson on the matrix form is not significant and does not invalidate it.

56. On whether there should have been a postponement of the consultation meetings, the claimant did not ask for a postponement. When he got the written feedback, there were still 2 meetings to go.

57. As for consultations not being meaningful, although the claimant may well have not had time to absorb the written feedback in the 2 hours available between receipt and the 2nd consultation meeting, he made no attempt at all on the 3rd consultation meeting to discuss the criteria and scoring with Hugh Murray who was manager of all the local sales teams and would have a perspective on the practicalities. It is hard to see how the consultations could have been meaningful when he did not engage.

58. At the appeal, it is clear from the discussion on the outcome letter that attention was paid to his particular points and he was given answers to them. There is no evidence on which to base a finding that he was selected for redundancy because of his age or salary. As far as we know older people better paid people were retained, and younger and less well-paid people let go. The claimant has not brought a claim of age discrimination. Nor does the tribunal accept the later accusation that Anita Wright was not just lacking in competence (the original claim) but actively wanted to remove him from the business. There is no evidence to support this.

59. In short, the claim of unfair selection for redundancy does not succeed. Redundancy is always a bruising process for those selected because of the implied judgement that their performance is inadequate. The nature of the process however is such that even those who are performing well may find themselves selected, because others are performing even better.

Breach of contract

60. The most recent terms of contract are set out in a letter to the claimant dated 13 July 2011. The clause on remuneration provides that his total reward package comprises his notional pay, which can be taken in full as taxable salary, or can be converted to non-core i.e. optional benefits if he wished. The claimant did not choose optional benefits, and was paid the full salary. The total reward package also included core benefits - the claimant had a monthly car allowance and medical and dental insurance.

61. There is a separate section dealing with holidays. He was entitled to 25 days per annum, accruing at 2.08 days for each complete month worked. This went up to 27 days after 5 years, and 30 days after 10 years. These were in addition to the 8 public holidays each year. By the date of termination he had over 10 years service, and so received 10 days per annum in excess of the statutory requirement (28 days including public holidays).

62. There was an additional provision by which “you may buy or sell up to 5 days holiday per annum”, provided he took at least 20 days holiday, and no more than 30 days. From this the claimant argues that he was entitled on termination to sell holiday days that would have accrued in the notice period.

63. The respondent relies on the clause in the contract by which “the company reserves the right to make a payment of salary in lieu of notice”. It is argued that they made a payment for salary, and of the core benefits. However, they argue, the claimant did not accrue holiday in the 6 months following dismissal, because he did not work those months.

64. Applying the terms of the contract, the claimant was only entitled to holiday which had accrued for months worked. He was paid for holiday accrued to the date of termination. He was not given notice, and did not work during the notice period, but was paid salary in lieu in accordance with the contract. Nothing in the contract indicates that holiday was part of salary. It was an additional benefit, which accrued as he worked.

65. It should be noted that had it not been a contractual benefit, and he had instead relied on his statutory entitlement, he would only have been entitled to be paid for days accrued but not worked at the date of termination. The breach of contract claim does not succeed.

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Employment Judge Goodman
Dated *24 August 2022*

JUDGMENT AND REASONS SENT to the PARTIES ON

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. 25/08/2022

FOR THE TRIBUNAL OFFICE