EMPLOYMENT TRIBUNALS

Claimant: Mr M Moseley

Respondents: 1 Dynasystems for Trade and General Consulting Company
2 Dynasystems Ltd
3 Explora Security Ltd

Heard at: London Central **On:** 9, 10 and 11 Nov 2016

Before: Employment Judge H Grewal

Representation

Claimant: Ms T O'Halloran, Counsel

Respondent: Mr G Baker, Counsel

JUDGMENT

1 The Second Respondent was the Claimant's employer throughout his employment.

2 The breach of contract claim in respect of the Claimant's salary in 2015 is well-founded.

3 The Tribunal does not have jurisdiction to consider the complaint of unauthorised deductions from wages.

4 The complaint on unfair dismissal is well-founded.

5 The complaint of wrongful dismissal is well-founded.

REASONS

1 In a claim form presented on 13 May 2016 the Claimant complained of unfair dismissal, wrongful dismissal and unauthorised deductions from wages. He was given leave to amend his claim on 22 August 2016 to allege that the unauthorised deductions from wages also amounted to a breach of contract. The Respondent had

brought an employer's breach of contract claim, but that was withdrawn at the close of evidence.

The Issues

2 It was agreed that the issues that I had to determine were as follows.

2.1 Which of the Respondents was the Claimant's employer;

2.2 Whether the Claimant was dismissed;

2.3 If he was, whether the dismissal was unfair or wrongful;

2.4 Whether the Claimant's employer had paid him less than that to which he was contractually entitled in 2015;

2.5 If it had, whether he had had waived any such breach; and

2.6 Whether the Tribunal had jurisdiction to consider any complaint of unauthorized deductions from wages.

The Law

3 Section 230 of the Employment Rights Act 1996 provides,

> *"(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*
>
> *(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*
>
> ...
> *(4) In this act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed."*

4 I was referred and had regard to **Consistent Group Ltd v Kalwac [2007] IRLR 560** (in the EAT) and **[2008] IRLR 505** (in the Court of Appeal), **Protectcoat Firthglow Ltd v Szilagyi [2009] IRLR 365** and **Autoclenz Ltd v Belcher & Others [2010] IRLR 70** (in the Court of Appeal) and **[2011] ICR 1157** (in the Supreme Court). The legal principles to be derived from those authorities, which were approved in the Supreme Court in **Autoclenz**, are as follows.

(a) "*Express contracts (as opposed to those implied from conduct) can be oral, in writing or a mixture of both. Where the terms are put in writing by the parties and it is not alleged that there are any additional oral terms to it, then those written terms will, at least prima facie represent the whole of the parties' agreement. Ordinarily the parties are bound by those terms where a party has signed the contract.*" (per Aikens LJ in the Court of Appeal in **Autoclenz** at

paragraph 87);

(b) *"Once it is established that the written terms of the contract were agreed, it is not possible to imply terms into a contract that are inconsistent with its express terms. The only way it can be argued that a contract contains a term which is inconsistent with one of its express terms is to allege that the written terms do not accurately reflect the true agreement of the parties"* (per Aikens LJ in the Court of Appeal in **Autoclenz** at paragraph 88);

(c) *"Where there is a dispute as to the genuineness of a written term in a contract, the focus of the enquiry must be to discover the actual legal obligations of the parties. To carry out that exercise the tribunal will have to examine all the relevant evidence. That will, of course, include the written terms itself, read in the context of the whole agreement. It will also include evidence of how the parties have conducted themselves in practice and what their expectations of each other were. Evidence of how the parties conducted themselves in practice may be so persuasive that the tribunal can draw an inference that that practice reflects the true obligations of the parties. But the mere fact that the parties conducted themselves in a particular way does not of itself mean that that conduct accurately reflects the legal rights and obligations."* (per Smith LJ in the Court of Appeal in **Autoclenz** at paragraph 52);

(d) *"But ultimately what matters is only what was agreed, either as set out in the written terms or, if it is alleged those terms are not accurate, what is proved to be their actual agreement at the time the contract was concluded. I accept, of course, that the agreement may not be express; it may be implied. But the court or tribunal's task is still to ascertain what was agreed."* (per Aikens LJ in the Court of Appeal in **Autoclenz);**

(e) *"... the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part."*

5 In **Ready Mixed Concrete (SE) Ltd v Minister of Pensions & National Insurance [1968] 2QB 497** Mackenna J identified the criteria for determining whether a contract of employment exists the following way –

"A contract of service exits if the conditions are fulfilled.

(i) The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his master.
(ii) He agrees expressly or impliedly that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.
(iii) The provisions of the contract are consistent with its being a contract of service."

6 The circumstances in which a contract can be implied between parties in the absence of any express contract between them were considered by Bingham LJ, as he then was in **The Aramis [1989] 1 Lloyd's Rep 213.** He said at p. 224,

> *"... no such contract should be implied on the facts of any given case unless it is necessary to do so; necessary, that is to say, in order to give business reality to a transaction and to create enforceable obligations between parties who are dealing with one another in circumstances in which one would expect that business reality and those obligations to exist.*
>
> *... It must surely be necessary to identify conduct referable to the contract intended for, or at the very last, conduct inconsistent with there being no contract between the parties to the effect contended for. Put another way, I think it must be fatal to the implication of a contract if the parties would or might have acted exactly as they did in the absence of a contract."*

7 Where there is a dispute between the parties as to the identity of the employer the test is who actually was the employer rather than who carried out some of the functions that an employer has to carry out – **Wittenberg v Sunset Personnel Services Ltd & Others EATS/0019/13**.

8 In **Secretary of State for Education and Employment v Bearman [1998] IRLR 431** there was a dispute as to whether the applicants in that case were employed by the Employment Service or the Royal British Legion Industries ("RBLI"). Morison J in the EAT said,

> *"It seems to us that the correct approach would have been to start with the written contractual arrangements and to have inquired whether they truly reflected the intention of the parties. If they did, then the next question was whether, on the commencement of their employment, the applicants were employees of the Employment Service or employees of RBLI. If the conclusion was that, when properly construed, on commencement of their employment the applicants were employed by RBLI, then the chairman* [of the Tribunal] *ought to have asked the question: did that position change and, if so, how and when?"*

9 **Section 13(1)** of the **Employment Rights Act 1996 ("ERA1996")** provides,

> *"An employer shall not make a deduction of wages of a worker employed by him unless –*
> *(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
> *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."*

Section 13(3) ERA 1996 provides,

> *"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."*

Section 23 ERA 1996 provides,

"...
(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of period of three months beginning with –
(a) in the case of a complaint relating to a deduction y the employer, the date of payment of the wages from which the deduction was made, or ...

(3) Where a complaint is brought under this section in respect of –
(a) a series of deductions ...
the references in subsection (2) to the deduction ... are to the last deduction ... in the series...

(4) Where the employment tribunal is satisfied that that it was not reasonable practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if is presented within such further period as the tribunal considers reasonable."

10 **Article 3** of the **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994** enables an employee to bring a breach of contract claim in an employment tribunal in respect of wages if the claim arises or is outstanding on the termination of his employment. Such a claim must be presented within the period of three months beginning with the effective date of termination of the employment (**Article 7**).

11 In order for there to be a variation of the terms of the contract both parties have to agree to the change. The parties may do so expressly, either orally or in writing. In certain circumstances agreement can be implied from the conduct of the parties. The test of whether it can be implied that an employee agreed to unilateral changes imposed by the employer by continuing to work was formulated by Elias J in **Solectron (Scotland) Ltd v Roper [2004] IRLR 4** as follows,

> *"The fundamental question is this: is the employee's conduct, by continuing to work, only referable to his having accepted the new terms imposed by the employer? That may sometimes be the case. For example, if an employer varies the contractual terms by, for example, changing the wage or perhaps altering job duties and the employees go along with that without protest, then in those circumstances it may be possible to infer that they have by their conduct after a period of time accepted the change in terms and conditions. If they reject the change they must either refuse to implement it or make it plain that, by acceding to it, they are doing so without prejudice to their contractual rights. But sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing, his conduct is entirely consistent with the original contract continuing; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct."*

That test was approved and endorsed by the Court of appeal in **Khatri v Cooperative Centrale Raiffeisen Boerenleebank BA [2010] IRLR 715**.

12 A statement by an employer that an employee will receive more than that to which he is contractually entitled may amount to a variation of the terms of the contract. Whether it does so will depend on whether:

(i) it was sufficiently certain;
(ii) an inference can be drawn from the terms of the statement and the context in which it was made that, objectively viewed, it was made with the intention of creating a legally binding obligation; and
(iii) It is plain that the employer dispensed with the need for any response to the offer.

That proposition of law is derived from the High Court and the Court of appeal decisions in **Attrill v Dresdner Kleinwort Ltd [2012] EWHC1189** and **[2013] EWCA 394.**

13 **Section 94 ERA** 1996 provides that an employee has the right not to be unfairly dismissed by his employer. **Section 95** provides that an employee is dismissed if –

> *"(a) the contract under which he is employed is terminated by the employer (whether with or without notice);*
> *(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or*
> *(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

The onus is on the employer to show that the dismissal was for one of the potentially fair reasons set out in **section 98(1) and (2) ERA 1996**. If the employer fails to do that, the dismissal is unfair. If the employer does show that it was for a potentially fair reason, the Tribunal has to determine whether the employer acted reasonably in all the circumstances of the case in treating that as a sufficient reason for the dismissal and the dismissal was fair (**section 98(4) ERA 1996**).

The Evidence

14 The Claimant, Richard Appleby and Peter Dunn gave evidence in support of the claim. The following witnesses gave evidence on behalf of the Respondents – Paul Gaston, Maurice Dorrington, James Marment, Peter Alevizos, Elaine Keast and Julian Greenwood. Having considered all the oral and documentary evidence, I made the following findings of fact.

Findings of fact

15 The three Respondents in this case are part of a larger group of companies which are all linked and serviced by the same personnel. However, it was not clear on the evidence before me precisely what the legal links between the companies were and, in particular, whether they were associated companies or some were subsidiaries of others. There was no evidence that there were any such links. What was clear was that the person who had founded the business and had overall control of this group of companies was Francis Le Carpentier. Mr Le Carpentier's daughter Mercedes and his son Philippe were involved in a number of the companies. The main business activity carried on by Mr Le Carpentier's companies is the design,

development, manufacture, sale and installation of a range of blast and ballistic mitigation products and systems.

16 Explora Security Ltd (the Third Respondent) carried our research and development and designed a range of blast and ballistic mitigation products and systems. It also did quality checks and provided certificates after the products were installed in locations. It is a UK registered company and its registered office was at 4 Talina Centre, Bagley Lane, London SW6 2BE. Its directors at the material time were Francis Le Carpentier, Maurice Dorrington, James Marment and Mercedes Le Carpentier. It did not have contracts of employment with any of the individuals who did any work for it.

17 Dynasystems Ltd (the Second Respondent) manufactured and sold the products and systems designed by Explora Security Ltd to a variety of customers all over the world. It was responsible for installing the products that it had sold at the various locations abroad. It is a UK registered company and its registered office was at the address of a firm of solicitors at 44 Baker St, London W1U 7AL. Its directors at the material time were Maurice Dorrington and Paul Gaston. It did not have contacts of employment with any of the individuals who worked for it.

18 Most of the managers and support staff who worked for the various companies in the group were employed by TFL Management Services Ltd, which was also a part of this group of companies, and worked at its premises at 4 Talina Centre, Bagley Lane, London SW6 2BE, which was also its registered office. TFL's directors at the material times were James Marment and Maurice Dorrington.

19 Dynasystems for Trade and General Consulting Company (the First Respondent) was incorporated and registered in a Free Zone area in Jordan. Foreign companies operating in the Free Zone areas in Jordan enjoyed a tax exempt status. There were tax advantages to the companies in the group in locating some of their economic activities in the Free Zone in Jordan and agreeing with HMRC that under transfer pricing rules the profits should be allocated to the Jordanian company which enjoyed a tax exempt status.

20 In order to demonstrate that the transfer pricing rules applied, on 18 Nov 2010 the Second Respondent entered into an agreement with the First Respondent and Explora General Trading Ltd (another company incorporated in Jordan) whereby it was agreed that the Second Respondent would exclusively sell products and services to third parties whilst the First Respondent and the other Jordanian company would provide at pre-agreed prices such products and personnel as were requested by the Second Respondent to facilitate contract fulfilment, and that the First Respondent would invoice the Second Respondent for the products and services provided on a contract by contract basis. According to the agreement Philippe Le Carpentier was the principal representative of the First Respondent, Paul Gaston of the Second Respondent and Mercedes Le Carpentier of the other Jordanian company. It was signed on behalf of the First Respondent by Philippe Le Carpentier who was described as its Director.

21 In order to obtain those tax advantages it was necessary for all the technical staff (for example, the engineers and electricians) who installed the products manufactured and sold by the Second Respondent to be shown to be employed by the First Respondent and a decision was made by the Second Respondent to that

effect. The contracts that they were given were identical to the contracts given by TFL Management Services Ltd to its employees other than in relation to the identity of the employer and where they would be based. Their contracts stated that the First Respondent was the employer and that the employee would be based at the Company's offices at 217 Abu Romman Building, 113 Al Medina Street, Al Kilo Circle in Amman in Jordan.

22 There was, however, no functioning office at that address. It was the registered office of the First Respondent. The First Respondent leased two apartments in Wadi Saqra, 4th Circle in Amman, one of which had a photocopier, fax machine and a printer and was used as an office. Those apartments were used and occupied by Mercedes Le Carpentier. One of the companies in the group (it was not clear which) also leased other residential apartments. One of them was used by Mr Marment when he was in Jordan and was referred to as "Jamie's apartment." This was purely residential accommodation and there was no office in the apartment.

23 There was also considerable lack of certainty and clarity about the personnel involved in the First Respondent. Mr Gaston said that he was "a nominated officer" of the First Respondent because there were no directors in Jordan. That was contradicted by the fact that Philippe Le Carpentier had signed the agreement to provide service and products to the Second Respondent on behalf of the First Respondent as its Director. Mr Dorrington said in his evidence that at the time of the hearing he was employed by the First Respondent although he had previously been employed by TFL Management Services Ltd. Although he claimed to be employed by the First Respondent, he said that he had never been to Jordan and was based in the London office. He was also Finance Director for all the companies in the group. Mr Dorrington also said that James Marment was employed by the First Respondent. Mr Marment said in cross-examination that he was not employed by the First Respondent. Mr Marment's evidence was that Mercedes Le Carpentier was in charge of running the office in Jordan and that she administered everything. However, she was employed by Explora General Trading Ltd. It appeared that the only employee who was based in Jordan and did any work for the First Respondent was a local resident called Mohammed who dealt with deliveries to and from the office.

24 Francis Le Carpentier, Paul Gaston and James Marment were shown on organisation charts as being on the Group Advisory Board and Mr Dorrington was on the Senior Executive Board. "The Group" appears to be referring to a number of companies that on the face of it were independent companies and not legally linked but in reality were closely linked and worked together. The companies shown in the charts as being part of "the Group" included the Second and Third Respondents, but not the First Respondent. All these senior managers were based in the office in Bagley Lane.

25 In July 2011 the Claimant, who had previously served with HM Armed Forces and was an electrician, applied for a role with Dynasystems through a recruitment agency called Ex-Mil Recruitment Ltd. He was interviewed by Mr Marment and someone called Mark Donnell in the London office in Bagley Lane. He was offered a role and accepted it verbally. On 29 July 2011 Mr Marment sent the Claimant an email. He reminded the Claimant that he had been part of his interview process for "Dynasystems" and said that he was delighted that the Claimant had accepted the

offer from "Dynasystmes". He said that Tim Reuter of "Dynasystems" would send him an offer letter. He continued,

> *"In essence, we will need to have you in London – we provide accommodation – for a week or two for in-briefing, administration and familiarisation. We need to get you a second passport and have your fingerprints taken for security vetting. Subsequent to getting all of that done* we would be deploying *you to either Afghanistan (Kabul) or Iraq (Baghdad)."* (my emphasis).

26 It is clear from that that the Claimant was recruited by Mr Marment, who was not a director or employee of the First Respondent. He was interviewed in the office in London and it was the office in London which was going to provide the briefing and familiarisation and help him to get the necessary documents. The First Respondent did not recruit the Claimant; it did not provide the briefing or assist the Claimant in getting the documentation that he needed to work and it was not the company that was going to deploy the Claimant to Afghanistan or Baghdad. Nothing was said at that stage to the Claimant about his being employed by the First Respondent or being based in an office in Amman.

27 The Claimant responded that he had given four weeks' notice to his employer but did not think that he would be able to start before 27 August 2011. Mr Marment responded that they would like him to start before then and said, *"We look forward to you joining us."*

28 The Claimant was advised by Mr Marment that as he was going to be working abroad most of the time he should look at becoming a non-UK resident and claiming tax relief on that basis. On 15 August 2011 the Claimant sent Mr Marment an email that he was with Dynasystems and was filling out forms for HMRC for tax relief and that he needed to know whether he would be paid from a UK company or a company abroad. It is evident from that that when he was recruited the Claimant was not told that he was going to be employed by a Jordanian company. Mr Marment responded that his employment was with a Jordanian registered company and that he had asked Tim Reuter to send him the details. Mr Reuter is shown in the organisation charts as being the Head of Legal in TFL Management Services and Head of Legal for Dynasystems Ltd. Mr Reuter informed the Claimant that he had to be employed by a foreign company in order for him to get exemption from paying tax. That was not in fact correct. The Claimant's tax exempt status was not dependent upon where the company employing him was based but upon his not being resident in the UK for more than a certain number of days in any given year.

29 On 22 August 2011 the Claimant attended the offices in Bagley Lane in London and was given three documents - an offer letter, a statement of terms and conditions and a letter to the Passport Office to support his application for a second passport. He was asked to sign the statement of terms and conditions and was asked to take the letter to the passport Office the same day.

30 The offer letter was on "Dynasystems" headed paper. The address given was 217 Abu Romman Bldg, 113 Al Madina Al Monawara St. Al Kilo Circle, Amman, Jordan. The website and email addresses given were www.dynasystems.co.uk and enquiries@dynasystems.co.uk respectively. The letter was from Mr Reuter. The letter stated that the Claimant would be employed to work as an Electrical Installation Engineer and would *"be based at the Jordan Office in Amman, Jordan, or as*

otherwise stated in your contract of employment." The Claimant signed that letter on 22 August 2014 to indicate that he agreed with the terms of the employment offer.

31 The statement of terms and conditions was said to form part of his contract of employment with Dynasystems FZE (Free Zone Enterprise) together with the offer letter and the Employee Handbook. The three Respondents and all the other companies in the group had the same Employee Handbook. The statement of terms and conditions contained the following clauses:

> *"3) Place of Work*
> *a) You will be based at the Company's offices at 217 Abu Romman Bldg, 113 Al Medina St, Al Kilo Circle, Amman, Jordan or as otherwise reasonably required by the Company. You may be required to travel to other locations for the better performance of your duties.*
> *b) The Company may require you to carry out your duties on behalf of the Company or a Group Company at another location than that states in Clause 3.a)"*
>
> *"6) Duties*
> *a) Your duties will be those normally associated with the function and position of Electrical Installation Engineer, although you may be required to perform such other additional reasonable duties in line with operational and management requirements. You may be required by the Company, to carry out your duties for and/or act as an employee of any other Group Company. Your immediate Line Manager at the date hereof is Lee Jones."*
>
> *"8) Remuneration*
> *a) Your current annual gross salary is £37,500."*

Clause 1 provided that in the statement "Group Company" and "Group" meant,

> *"any subsidiary or associated company of the Company and any other entity that is notified to you in writing from time to time, provided that your engagement shall mean that you are able to obtain Confidential information of or about that entity."*

It further provided that "subsidiary" had the meaning given to it in section 148 of the Companies Act and that "associated company" meant *"a Company that belonged to the same Group as the Company".*

32 The letter to the Passport Office was on Dynasystems Ltd headed paper (with the UK company's address and company registration number) and was signed by Tim Reuter as Company Secretary. It stated,

> *"Mr Moseley is an employee of Dynasystems Limited working upon our Contracts in the Middle East region. He travels frequently between Israel and neighbouring Arab countries and requires a second passport to facilitate this travel.*
> ...
> *The contracts on which Mr Moseley will be working are variously for the U.S Secretary of State via that U.S. Naval Logistics Department, NATO*

Forces in Afghanistan, U.S. Military in Iraq & Kuwait and testing facilities in Israel."

33 On 23 August 2011 Ex-Mil Recruitment sent an invoice to Tim Reuter in London for the placement of the Claimant. The company being invoiced was Dynasystems FZE at the 217 Abu Romman Building address.

34 In September 2012 the Claimant was given a fresh statement of terms and conditions that was different in a number of respects from the one that he had been given at the start of his employment. He signed the statement on 14 September 2012. Paul Gaston signed it on the same day on behalf of the First Respondent. The clause in respect of his duties (clause 3 in the 2012 statement) was the same as clause 6 in the 2011 statement, except that it provided that he could be required to carry out his duties for and/or act as an employee of *"any other Associated Company"* and his line manager was said to be Paul Gaston, and his Rotational Managers were Lee Jones and Anthony Black. Clause 4 relating to his place of work was the same as clause 3 in the 2011 statement but *"or a Group Company"* was changed to *"or an Associated Company."* "Associated Company" in the 2012 statement meant,

> *"the Company, its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time, and any other entity that is notified to you from time to time."*

35 The 2012 statement also contained the following terms and conditions which were different from those in the 2011 statement:

> *"5) Work Schedule and Hours*
> *a) The Company operates a rotational work schedule of eight (8) weeks deployment to a theatre of operation followed by two (2) weeks rotational leave for Rest and Recuperation. This schedule may change depending on the requirements of the Company from time to time."*
>
> *6) Salary*
> *a) Your current gross annual salary is £35,000.00.*
> *b) You shall also receive an additional £15,000.00 based on you being deployed to a theatre of operation in a hostile environment on a regular basis, as decided by the Company, to carry out your duties.*
> *c) Should your role within the Company and your duties change, either due to operational requirements or to your personal requirements, your salary may be renegotiated.*
> *d) Your salary will, subject to deduction of lawful witholdings, be paid in twelve monthly installments in arrears and by standing order to be received by you on or before the last business day of each calendar month."*

Clause 22 provided,

> *"the Company reserves the right to vary the terms of this Statement from time to time. Any changes will be notified to you in writing either individually, or at the option of the Company, through a general notice to all employees."*

36 In January 2013 the Claimant's salary was increased by Mr Gaston to £55,000 per annum. The salaries of other technicians and engineers were also increased at the same time and they were all given a new statement of terms and conditions to reflect that change. The Claimant did not have a copy of his new statement, but Peter Dunn produced a copy of the statement that he signed in January 2013. The wording of the salary clause was slightly different from the wording in the 2012 statement. Clause 6(a) in the January 2013 statement provided (it was not in dispute what the figures in the Claimant's statement would have been and I have inserted them into clause 6(a)),

> *"Your current gross annual salary is £55,000. This is calculated based on the basic salary of £38,500 with an additional £16,500 based on you being deployed to a theatre of operation in a hostile environment on a regular basis, as decided by the Company, to carry out your duties."*

37 Lee Jones, Anthony Black, Peter Dunn and Richard Appleby were all individuals who, like the Claimant, worked on the contracts of the Second Respondent installing their products abroad. However, for the reasons given in paragraphs 19-21 (above), they were given the same statements of terms and conditions as were given to the Claimant.

38 Neither the Claimant nor any of the other electricians and engineers working on the Second Respondent's contracts were ever based at the office at which it was said that they were based in their statements of terms and conditions of employment. It could not have ever been intended that they should be based at that address because there was no functioning office at that address. Nor indeed were they based in Jordan. Between 1 May 2012 and 3 March 2016 the Claimant spent a total of 70 days in Amman in Jordan. The last time that he was in Amman, prior to the termination of his employment in early 2016, was in September 2014. Most of the periods that he spent in Amman were just before and after trips to Israel. The reason that he travelled to and from Israel via Jordan was because it was easier to get in and out of Israel travelling by road than by air. When he was in Amman the Claimant did not work and was not based at the apartment in Wadi Saqra which was used as an office by Mercedes Le Carpentier. He spent his time in Mr Marment's apartment which was residential accommodation. In the four years that Peter Dunn worked for the Respondents he spent a total of two weeks in the apartment in Jordan which was used as an office. Ricard Appleby, who worked for the Respondents for just under three years, spent no more than seven days in the apartment that was used as an office.

39 Paul Gaston, who was a director of the Second Respondent but neither an employee nor a director or any other officer of the First Respondent) was responsible for project budgets from which the salaries of the technicians and engineers working in the field ("the field team") were paid. As such he was in control of their salary and could increase it. In December 2012 Paul Gaston increased the Claimant's salary from £50,000 per annum to £55,000 per annum (£4,583.33 per month). Mr Gaston was designated the Claimant's line manager in the September 2012 statement of terms and conditions and from the latter part of 2014 became more involved in the management and supervision of the field team. The decisions about where to deploy the field teams and all instructions and orders to them came from the London office, primarily from Paul Gaston. If there were any issues in the field, the team raised them with Mr Gaston or the London office. The decisions about which contracts they

worked on were not made in the Jordanian office of the First Respondent or by its officers or any managers employed by it.

40 In the course of his four and a half years of employment the Claimant did not do any work for or on behalf of the First Respondent. He worked predominantly for the Second Respondent but was sometimes asked to act as a representative of the Third Respondent when things had to be signed off by the Third Respondent and there was no one available to do it. He was held out to third parties (such as NATO, the UN, etc) as the Technical Adviser or Technical Supervisor of the Second Respondent and signed documents and certificates on its behalf as its representative. There was no evidence before me of him signing any documents on behalf of the First Respondent or of him being held out to a third party as its representative. He was provided with business cards and email addresses which showed him as being the representative of the Second or Third Respondents. He did not have any business cards or email address for the First Respondent. All of the above applies to others in the field team as well. All the health and safety equipment (body armours, high visibility vests, helmets and gloves) and tools were provided by the Second Respondent. Some of the health and safety equipment carried the name of the Second Respondent on it.

41 All requests for holidays were made of the London office. Mr Gaston said that if any disciplinary issues had arisen, the matter would have been dealt with in the London office. When the field team were not deployed abroad, they were told by the managers in London whether they had to attend the office or to assist in factories in other locations in England. They did not return to and work from the office in Amman when they were not being deployed on contracts above.

42 The only link that they had with the First Respondent was that their salaries were paid into their accounts every month from an account held by the First Respondent. There was no evidence before me of the First Respondent invoicing the Second or Third Respondents for providing them the personnel to service their contracts.

43 In 2013 the Claimant spent five periods, which came to a total of about 218 days, working in Afghanistan. He spent about seven days in Jordan and about seven days in the London office. He also spent 19 days working in the factory of one of the other companies in the group and six days on tests in Israel. The rest of the time was classified as "leave/rotation". In 2014 the Claimant spent about 146 days in Afghanistan and 28 days in Lebanon, Syria and Israel. Throughout that period the Claimant was paid a monthly salary of £4,583.33 per month (£55,000 divided by 12). It was accepted by the Respondents that all the field team were paid the full salary throughout 2013 and 2014 regardless of whether they had been deployed to a theatre of operation in a hostile environment in any given month.

44 In the latter half of 2014 the Second Respondent's business declined as NATO and US troops pulled out of Afghanistan and there was a decrease in demand for its products. The Claimant and others in the field team were not paid in November 2014 but the shortfall was made up in December 2014. It was clear to the technicians and engineers working in the field that there was less work available on contracts abroad and that the Respondents were in financial difficulties. Some of the field team left at the end of 2014/beginning of January 2015. Those that remained were concerned

that they might not be paid the full wage if they were not deployed to a theatre of operation in a hostile environment.

45 The issue of whether non-deployment to a hostile environment would have an impact on the salaries of the field team was raised at a meeting in London in January 2015 at which most of the field team was present as were Francis Le Carpentier and Paul Gaston. It was made clear to management that most of the technicians would leave if there was a reduction in their salaries. The managers were optimistic that that the downturn would not last as there were various opportunities in the pipeline which could materialise. They wanted the companies to have capacity to take advantage of any work that arose and, as a result, were anxious to retain the services and skills of their technicians. They, therefore, assured them that there would be no reduction in their wages even if they were not deployed to hostile environments abroad. They would continue to be paid the same salary as before, regardless of whether or not they were deployed in hostile environments. On the basis of that assurance, the Claimant, and others, did not leave and seek work elsewhere.

46 In 2015 the Claimant spent 25 days in Afghanistan at the beginning of the year, three days in Lebanon in February and about five days in Ethiopia in October. Almost all the rest of the time was spent in the UK. The Claimant was required to be present at the London office and was permitted to use a flat rented by one of the companies in the group. The Claimant was frustrated having to spend long periods in the London office where there was no work for him to do. He asked on a number of occasions whether he could take a sabbatical but was told that he could not.

47 The Respondents had cash flow problems throughout in 2015 and there were occasions when they were not able to pay the field team their full salaries. However, in the months when funds were available they were paid the higher rate as Mr Le Carpentier had promised them they would be. I set out in the table below the sums that were paid to the Claimant between January 2015 and February 2016 –

January	£2,291.66
February	Nil
March	£4,5833.33
April	Nil
May	£4,583.33
June	£4,583.33
July	£4,583.33
August	Nil
September	£4,583.33
October	£2,000
November	Nil
December	£9,583.33
January	£4,583.33
February	£5,000

46 When there were insufficient funds to pay the full salaries, Mr Gaston would advise the technicians that they would not receive their full salary that month. Whenever this happened, the Claimant asked Mr Gaston when he would receive the balance and Mr Gaston assured him that the shortfall would be made up when the

company received more funds. The Claimant never accepted or agreed that the First Respondent should pay him whatever it could whenever it could. He continued working when he was not paid the full wage on the clear understanding that the shortfall remained owing to him and would be paid later. Some of the members of the field team left as a result of the erratic nature of the salary payments. The Claimant was worried about the arrears growing but was concerned that if he left he would never receive the sums owing to him.

47 In July 2015 Julian Greenwood was asked by NATO to provide an organisation chart showing the positions and titles of Explora or Dynasystems staff who were going to be working on a contract in Afghanistan at the end of the year. The response showed the Claimant as being "Dynasystems Technical Supervisor". In October 2015, in respect of the trip to Ethiopia, he was described by Mr Gaston as "Mark Moseley of Dynasystems Ltd."

48 The Claimant was in Afghanistan from 2 to 29 January 2016. He was paid more than his normal monthly salary in December 2015 because he and a number of his colleagues insisted on some of the money owing to them to be paid before they were deployed to Afghanistan.

49 The deployment in Afghanistan did not go smoothly and the Claimant and Des O'Connor, the colleague with him on the assignment, were very unhappy about the way the support staff of the Second and Third Respondents had handled a number of matters. The Claimant raised some of his concerns in an email to Paul Gaston on 27 January 2016. He said that the project had been described as "an embarrassment" by a manager in NATO, who was the client. He also complained about the fact that the flights had been booked in such a way that he and Mr O'Connor were flying back at the same time as the team replacing them was flying into Afghanistan, which made the logistics of a handover difficult. The Claimant was also unhappy that one of the team replacing them was someone who had left the Respondent two years earlier but had been recruited again at a higher wage than the Claimant was being paid. The Claimant resented the fact that the company was prepared to pay him a high wage while not paying him his full pay and that it was recruiting someone instead of using the employees that it already had.

50 A debriefing meeting took place on 1 February 2016 after the Claimant and Mr O'Connor returned to London. Francis Le Carpentier, Paul Gaston and Julian Greenwood were present at the meeting. Julian Greenwood was a consultant who did work for the companies in the group. The debriefing was not very constructive because Mr Le Carpentier was not prepared to listen to any criticism of the support and administrative team in London. He also told them at the end of the meeting that going forward when they were not engaged a theatre of operation, their pay would be reduced to the basic pay. The Claimant went on holiday shortly after this meeting and returned to work towards the end of February.

51 On 25 February Paul Gaston invited the Claimant to a meeting. Julian Greenwood was present at the meeting. Mr Gaston informed the Claimant that there were no projects coming up in the immediate future on which they could use him and that they could not give any guarantee about future contracts or when there would be work for him. Mr Gaston said that the company's position would remain difficult and that it would not be able to pay him when he was not working. It was suggested to the Claimant that he could take a sabbatical but the Claimant made it clear that he

was not interested in that. He asked what his status would be when he was not working and Mr Gaston said that it could be regarded as unpaid leave. He said that if any suitable projects came up, they would call him and the Claimant snapped back something like "Why bother." Mr Gaston advised him "not to burn any bridges" because in a few months' time a really good job might come and they might want him for that. The Claimant asked Mr Gaston if he could have something in writing confirming the salary that he was owed. Mr Gaston said that he could and asked him to draft a letter setting out the sums owed to him for his approval.

52 After the meeting the Claimant sought legal advice from the Citizens' Advice Bureau and later that day asked Mr Gaston whether redundancy might be an option if there was no work for him, and Mr Gaston said that he would raise it with "the powers that be."

52 Following the meeting, the Claimant approached Peter Alvezios, an Accounts Administrator employed by TFL Management Services Ltd, and asked him for a document setting out the wages and expenses that he was owed by the company. Mr Avezios gave him a document which set out that he was owed expenses of £389.38, wages of £18,208.32 (the difference between £4583.33 per month and what he had in fact been paid) and February's wages of £4583.33.

53 On the basis of that the Claimant sent Mr Gaston a draft letter which stated that between November 2014 and March 2016 Dynasystems Ltd UK had failed to honour its contractual agreement by not paying him his monthly wage in full and that the total sum owing to him was £23,181. The Claimant was paid £5,000 at the end of February.

54 On 29 February 2016 (Monday) the Claimant sent an email to Harriet Richardson in the Legal Department in which he said that he wanted to know where he stood. He said that Paul and Julian had told him that he would be going on unpaid leave and that he had disagreed with that option. He had subsequently told Paul that he had been advised by the Citizens' Advice Bureau that the company could not legally do that unless he consented to it or all the field team was also being treated in the same way. He had asked Paul about redundancy and Paul had said that he would get back to him. He asked her to advise soonest what the company stance was with regards to him.

55 On 2 March Ms Richardson informed the Claimant that he would have a response to his email that week. As the Claimant had not heard by the end of the week he attended the office on 4 March. He spoke to Francis le Carpentier and Paul Gaston and asked when he would receive a response to the matters that he had raised. Mr Le Capentier swore at him (told him to "get the fuck out") and told him that he would get his letter. On 7 March the Claimant sent another email to Ms Richardson and asked her to conform what was owing to him and whether his employment had been terminated and, if so, the date of termination.

56 On 20 March 2016 Mr Marment sent the Claimant a letter dated 16 March 2016 signed by Paul Gaston for and on behalf of the First Respondent on the First Respondent's headed paper. The opening paragraph of the letter stated,

> *"As agreed with you in discussions with Paul Gaston and Julian Greenwood on Thursday 25 February 2016, in accordance with your contract your*

employment with Dynasystems for Trade and General Consulting Company Ltd (FZE) effectively ceased as from Monday 29th February 2016."

Attached to the letter was an Excel spreadsheet setting out for each month between January 2015 and February 2016 the actual sums that had been paid to the Claimant (see the table at paragraph 47 (above)) and the sums which the company alleged that he was contractually owed each month. The company's position was that for the months when he had not been deployed to a theatre of operation in a hostile environment he was contractually entitled to be paid £3,208.33 per month (1/12 of £38,500). For the three months in which had been deployed overseas, the company had calculated the uplift on a pro rata basis. The conclusion was that there was a shortfall of £160.04.

57 On 30 March 2016 solicitors instructed by the Claimant wrote to Mr Marment at the Bagley Lane address. They said that they were instructed by the Claimant in relation to his employment with Dynasystems for Trade and General Consulting Company and that the Claimant did not accept that his employment had been terminated by agreement at the meeting on 25 February 2016. They set out the Claimant's account of the meeting, which is in accordance with what I found (at paragraph 51 (above). They also disputed the company's calculation of what was contractually owed to the Claimant and said that their instructions were that it had been agreed between the field team and Francis Le Carpentier, in the presence of Paul Gaston, that their salaries would not be cut even if they were not deployed to theatres of operation in a hostile environment.

58 On 25 April 2016 the Claimant commenced early conciliation against all three Respondents. An Early Conciliation certificate was granted on the same day.

Conclusions

Identity of the employer

59 It was not in dispute that that the written statement of terms and conditions which the Claimant agreed and signed on 22 August 2011 stated that his contract of employment was with Dynasystems FZE. The issue for me, therefore, was whether that express term accurately reflected what was agreed between the parties. In determining that issue, I had regard to the relative bargaining power of the parties and the conduct of the parties before and after they signed that written statement. The issue, in essence, was whether the Claimant was in fact employed by the First Respondent or that term in his contract was a sham, in that it was not an accurate reflection of the reality.

60 In determining that issue I took into account the following factors. It is clear that another important term in the contract, namely the one which provided that the Claimant would be based at the office in the Abu Romman Building in Amman in Jordan was a sham and one that the parties had not in fact intended or agreed (in particular, see paragraphs 22 and 38 above). It was very difficult to identify anyone who was either an officer or a senior employee of the First Respondent, other than Philippe Le Carpentier who appeared to be a director. Paul Gaston was neither an officer (as understood in company law) nor an employee of the First Respondent and did not hold any position of responsibility within it. He described himself as "a nominated officer" of the First Respondent in order to explain why he was managing

staff ostensibly employed by the First Respondent (see paragraph 23 above). The First Respondent was not involved in any way in the recruitment of the Claimant (although the invoice for the recruitment was addressed to it) or in the process to equip him to start work. At the time when the Claimant was offered and accepted employment nothing was said about the fact that he would be employed by a Jordanian company. All the contemporaneous communication referred to "Dynasystems" which both parties understood to be a reference to the Second Respondent (see paragraphs 25-27 above). The reference to the Claimant's employment being with a Jordanian registered company only arose in the context of his inquiring whether he would be paid by a UK company or an overseas company (see paragraph 28 above). The decision as to which legal entity was to formally employ the Claimant lay with the Respondent and one over which the Claimant had no control and had no option but to accept if he wanted to take up the employment. The letter to the Passport Office that the Claimant was given at the same time as when he signed his written statement of terms clearly stated that he was employed by the Second Respondent (see paragraphs 29 and 32 above). That letter was signed by the Head of Legal in the Second Respondent and is a strong indicator that both parties agreed and understood that, regardless of what the written statement said, the Claimant was to be employed by the Second Respondent. Mr Gaston, who was a Director of the Second Respondent, effectively managed the Claimant and decided his salary. He decided where and when the Claimant would be deployed (see paragraph 39 above). There was no evidence of anyone from the First Respondent giving the Claimant instructions, managing him or deciding his level of remuneration. The Claimant never did any work for the First Respondent and worked primarily for the Second Respondent. He was never held out to third parties as a representative of the First Respondent. The First Respondent did not supply the Claimant with any health and safety equipment or tools (see paragraph 40 above). All those factors are strong factors to indicate that notwithstanding what the express term in contract said, both parties knew and understood from the outset that the Claimant would in fact be employed by the Second Respondent.

61 It was not in dispute that the Claimant's salary was paid from a bank account held by the First Respondent. However, the level of the Claimant's salary was decided by Paul Gaston and, on occasions, by Francis Le Carpentier, neither of whom held any position of responsibility with the First Respondent. All the discussions about shortfall in salaries in 2015 took place with Mr Gaston. Discussions about the level of pay when the field team was not being deployed to theatres of operation in a hostile environment took place with Paul Gaston and Francis Le Carpentier. Those factors re-inforce the argument that the Claimant was employed by the Second Respondent as opposed to the First Respondent. It was also argued on behalf of the Respondents that the Claimant working for the Second Respondent was entirely consistent with his being employed by the First Respondent and being required to work for others as stipulated by clauses 3 and 6 of his 2011 contract and clauses 3 and 4 of his 2012 contract. The difficulty with that argument is that under those clauses the instructions to carry out his duties on behalf of a Group Company or an Associated Company had to come from the First Respondent. The instructions to the Claimant about which company he was representing on any contract did not come from the First Respondent. They came from the officers of the Second and Third Respondents based in the London office. It was not in any event clear whether the Second and Third Respondents were a Group Company or an Associated Company as defined in the Claimant's contracts. Furthermore, working exclusively for other companies and not doing any work for the First respondent is

not, in my view, consistent with those clauses. It is significant that for the greater part of 2015, when the Claimant was not deployed in a theatre of operation, he did not carry out any duties for the First Respondent but spent long periods in the London office not carrying out any work. The First Respondent also placed reliance on the fact that the letter of 30 March 2016 from the Claimant's solicitors referred to employment with the First Respondent. That does not indicate to me that the Claimant considered the First Respondent to be his employer. In the draft letter the Claimant sent to Mr Gaston at the end of February he referred to the Second Respondent as being his employer. The most likely explanation of the solicitors' letter is that they relied upon what was said in the Claimant's written statement of terms and conditions.

62 Having considered all the above factors, I am satisfied that the express term in the Claimant's written statement of terms and conditions does not reflect the actual agreement between the parties, and that it was understood from the outset that in reality the Claimant would be employed by the Second Respondent. It was not a question of the Second Respondent carrying out some of the functions of an employer but a case where it carried out all the functions of the employer because it was in reality the employer.

Breach of contract/unauthorised deductions from wages

63 I considered first of all what the employer, who I have found to be the Second Respondent, was obliged to pay the Claimant under his contract issued in December 2012/January 2103. (The same reasoning would apply if the employer were in fact the First Respondent). I do so on the basis that the Claimant's contract would have contained a remuneration clause in the same terms as that which was in Peter Dunn's contract (see paragraph 36 above). It is clear to me from the wording of that clause that the phrase "*as decided by the company*" refers to the deployment of the Claimant to theatres of operation in a hostile environment and not to the level of payment that would be made if he were so deployed. The clause as a whole is, in my opinion, ambivalent and capable of having two different meanings. The first is that the Claimant is contractually entitled to a gross annual salary of £55,000 and that the rest of that clause simply explains how that salary is calculated. The additional award forms a component of his salary and is paid in recognition of the fact that he will be deployed to theatres of operation in a hostile environment on a regular basis. The second meaning is that the Claimant will only be paid the additional amount if he is deployed to theatres of operation in a hostile environment on a regular basis. Even on that interpretation what the clause does not say is that the Claimant is entitled to a 1/52 of £17,500 each week that he is deployed to a hostile environment – what it says is that he is entitled to the additional payment (all of it) if he is deployed to a hostile environment on a regular basis.

64 The fact that the Claimant and other members of the field team were paid the annual salary comprising both the basic salary and the additional amount in 2013 and 2014 is consistent with both the above interpretations. In those years the Claimant was deployed to a hostile environment on a regular basis, albeit less often in 2014 than in 2013 (see paragraph 43 above). That, however, was not the case in 2015 and the issue that I had to determine was what the Claimant was contractually entitled to be paid in 2015.

65 If the first interpretation in paragraph 63 (above) is correct, the Claimant would remain to be entitled under his contract to a gross annual salary of £55,000 unless and until the Second Respondent varied that term. If the second interpretation is correct, the Claimant would only be entitled under his contract to a gross annual salary of £38,500 unless the parties varied that term. The payment of the full salary in 2015 was specifically raised and discussed at a meeting in January 2015 (see paragraph 45 above). The statement made by the managers at the meeting that the members of the field team would continue to receive the full salary, regardless of whether or not they were deployed to hostile environments, and that there would be no reduction in their salaries was sufficiently clear and, in the context in which it was made, was intended to create a legally binding obligation. The statement was made with a view to retaining staff. The members of the field team relied upon it in making the decision to stay and continue working for the Second Respondent. If the second interpretation of the remuneration clause is correct, that statement, in all the circumstances of this case, amounted to a variation of that clause. Further support is lent to that conclusion from the subsequent conduct of the parties. Throughout 2015, whenever the Respondents had sufficient funds to pay the Claimant and the others, they were paid the full amount. A company that was in financial difficulties would not have paid its employees the higher sum unless it considered that it was contractually bound to pay that sum. When the Claimant was not paid his full salary and questioned it, he was never told that he was not contractually entitled to that sum. If the first interpretation of the remuneration clause is correct, the statement in January 2015 amounted to an assurance that that term would not be varied to reflect the change in circumstances. It is, therefore, my conclusion that in 2015 the Claimant was contractually entitled to be paid a gross annual salary of £55,000, either because that is what his 2013 contract provided or, if it did not, it had been varied in January 2015 to provide that.

66 It was also submitted on behalf of the Respondents that either the Claimant's contract had been varied in 2015 (it was not clear as to how and when it was said this variation took place) to include a term that he would only be paid what the Respondent was able to pay him at the end of each month or that he waived any breaches of his contract when he had been paid less than that to which he was contractually entitled. The Respondent relied upon the following passage in the particulars of claim in support of those submissions,

> *"The nature of the business is that there are peaks and troughs in the work levels of the employees of the Respondent and it was accepted practice that that employees would be paid as the Respondent were able to. However, from November 2014, the Claimant started to frequently be paid less each month than he should have been, with the difference never made up."*

It was submitted that that proved that the Claimant had waived any breaches of contract by his employer by accepting that he would be paid less. I do not agree. It was clear from the evidence of both the Claimant and Mr Gaston that the Claimant questioned the non-payment of his full salary and that he continued working for the Respondent on the clear understanding that the shortfall remained owing to him and would be made up. He never accepted or agreed that he would forgo the shortfall.

67 There was no evidence that any of the managers ever informed the Claimant or the other members of the field team that the remuneration clause in their contracts was being varied to say that they would be paid each month whatever the company

was able to pay them. It is correct that there were some months when the Claimant was not paid his full wage and that he continued working for the Second Respondent. However, he did not do so without protest. He questioned it and was assured that he would be paid it. In those circumstances, I do not think that it can be said either that that it can be implied from the conduct of the parties that they agreed to vary the remuneration clause to say that the company would pay the Claimant what it could when it could or that he waived any breaches of contract by the company not paying him his salary.

68 I concluded, therefore, that in 2015 the Claimant's employer was contractually obliged to pay him a salary of £4,583.33 per month and that it was in breach of contract whenever it paid him less and that he has not waived any such breach. I accept that the complaint of unauthorised deductions from wages was not presented in time and I am not satisfied that it was not reasonably practicable for it to have been presented in time. Therefore, the Tribunal does not have jurisdiction to consider that claim, but it does have jurisdiction to consider the claim for breach of contract and that claim is well-founded and the Claimant is entitled to be paid the difference between what he was paid and what he should have been paid if he had been paid £4,583.33 per month.

Was the Claimant dismissed?

69 The Respondent's case was either that the Claimant had resigned at the meeting on 25 February 2016 or that his employment terminated by mutual agreement at that meeting. The Claimant's case is that he was dismissed on 20 March 2016 with effect from 29 February 2016.

70 I accept that it would have been clear to both parties at the meeting that it was likely that the Claimant's employment would be terminated. The Second Respondent's position was that it could not continue to employ him unless he agreed to take a sabbatical or unpaid leave until there was work available for him. The Claimant made it clear that he did not think that that was an acceptable option. That having been said, the Claimant's employment did not terminate at that meeting either by him resigning or by the parties agreeing that his employment had terminated. The fact that it did not terminate is evident from the fact that discussions continued as to how matters could be resolved. On the same day very soon after the meeting the Claimant suggested redundancy as an option and Mr Gaston agreed to raise that with his superiors. About four days later (after the weekend) the Claimant sought clarification from Ms Richardson in the Legal Department as to his employment status. If it had been clear to Mr Gaston that the Claimant had resigned at the meeting on 25 February, it is surprising that he did not say that to the Claimant when he raised redundancy or that Ms Richardson did not respond to the Claimant's email of 29 February by stating that. When the second Respondent did finally send the Claimant a letter on 20 March, that letter did not say that he had resigned on 25 February or that his employment had terminated on that date. I concluded that the Claimant's employment was terminated in that letter by the Respondent with effect from 29 February 2016.

71 It follows from that that the Claimant was dismissed. The Second Respondent (the same would apply if the First Respondent were the employer) has not established that there was a potentially fair reason for the dismissal. In those

circumstances, the dismissal was unfair. The Respondents did not advance a positive case putting forward a reason for the dismissal or to argue that it was fair.

Wrongful dismissal

72 The Claimant was dismissed without notice. The Second Respondent was not entitled to dismiss him without notice. The Respondents did not adduce evidence or argue that they were entitled to dismiss him without notice because he was guilty of gross misconduct.

H. Grewal

Employment Judge

3 January 2017.

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 January 2017

FOR THE TRIBUNAL OFFICE