



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ayooob

Respondent: Ummah Welfare Trust

HELD AT: Manchester (in person/by CVP – hybrid) **ON:** 15, 16, 17 and 18 March 2022 and 5, 6, 7 and 8 December 2022 (with further chambers consideration)

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: unrepresented

Respondent: Ms L Halsall (counsel)

JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint of unfair dismissal contrary to part X of the Employment Rights Act 1996 is not well founded which means it is unsuccessful.
- (2) The complaint of wrongful dismissal/notice pay is not well founded which means it is unsuccessful.

Introduction

1. The claimant presented a claim form to the Tribunal on 6 February 2017 following period of early conciliation from 12 January 2021 to 22 January 2021 and brought complaints of unfair dismissal.

2. The respondent presented a response resisting the claim, which was presented out of time, but was given permission for an extension of time by the Tribunal.
3. In terms of case management, Employment Judge ('EJ') Slater sought clarification from the claimant whether he was bringing a section 100 Employment Rights Act 1996 ('ERA') or section 103A ERA. The claimant confirmed that he was only bringing a complaint of unfair dismissal and was given permission to bring a breach of contract/notice pay complaint in addition to the unfair dismissal complaint by Employment Judge ('EJ') Allen on 27 August 2021. He also gave the respondent permission to present an amended response. The final hearing date was revised, and case management orders made as appropriate.
4. EJ Batten ordered on 27 October 2021 that hearing would be in person, but witnesses could give evidence remotely by CVP if appropriate. The final hearing was relisted and extended to 4 days by EJ Batten on 23 November 2021.

Complaints and Issues

5. Unfair dismissal

Dismissal

- a. Was it a potentially fair reason under section 98 Employment Rights Act 1996?

Fairness

- b. If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?
- c. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - i. The respondent genuinely believed the claimant had committed misconduct
 - ii. there were reasonable grounds for that belief;
 - iii. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - iv. the respondent followed a reasonably fair procedure;
 - v. dismissal was within the band of reasonable responses.

6. Remedy for unfair dismissal

- a. What basic award is payable to the claimant, if any?
- b. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- c. If there is a compensatory award, how much should it be? The Tribunal will decide:
 - i. What financial losses has the dismissal caused the claimant?
 - ii. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - iii. If not, for what period of loss should the claimant be compensated?
 - iv. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - v. If so, should the claimant's compensation be reduced? By how much?
 - vi. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - vii. Did the respondent or the claimant unreasonably fail to comply with it?
 - viii. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - ix. If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
 - x. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - xi. Does the statutory cap of fifty-two weeks' pay apply?
- d. What basic award is payable to the claimant, if any?
- e. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

7. Wrongful dismissal / Notice pay
- a. What was the claimant's notice period?
 - b. Was the claimant paid for that notice period?
 - c. If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?
 - d. What award should be made for this complaint, if any?

Evidence used

8. In terms of the claimant's case, the claimant gave evidence and he called Mr Raees Usman. As this was a case where unfair dismissal was the primary complaint and the respondent accepted that there had been a dismissal, it was the respondent who gave evidence first. where dismissal accepted, R went first.
9. The respondent relied upon the following witnesses and their evidence was heard in this order:
 - a) Mohammed Athar (secretary of trustees).
 - b) Shoyedb Adat (investigating officer).
 - c) Mohammed Seedat (line manager)
 - d) Iqbal Rawat (appeal hearing officer).
 - e) Idris Mohammed Atcha (dismissing officer)
10. Mr Athar gave evidence remotely by CVP from Saudi Arabia. In accordance with current practice, Foreign Commonwealth and Development Office ('FCDO') permission had been given to the respondent's solicitors for evidence to be given outside of the UK and Northern Ireland jurisdiction. Unfortunately, Mr Athar did not have the bundles and statements available to him and Ms Halsall helpfully used the share pdf mode available on CVP so that he could see the relevant documents on his screen and thereby answer the questions put to him.
11. Mr Rawat gave evidence remotely by CVP from his home in Greater Manchester because of caring responsibilities and he had with him, all of the necessary hearing bundles and witness evidence when he gave his evidence.
12. Both Mr Adat and Mr Seedat gave evidence in person at the Tribunal hearing room at Alexandra House in Manchester. However, Mr Seedat needed to conclude his evidence by lunch on day 3 of the hearing and it was agreed that he would be discharged from his oath in the interim, but he would be recalled for a further hour of cross examination, judicial examination and re-examination at the next hearing date.

13. The main difficulty however, related to the Tribunal hearing the evidence of what appeared to be the key, Mr Idris Atcha who was the dismissing officer in this case. I understood that he is a UK national, but his primary residence is in Kuwait. Unfortunately, during the first part of the hearing, Ms Halsall informed me that her instructing solicitors had said they had not been informed of Mr Atcha's circumstances and accordingly an FCDO request for permission to give evidence from Kuwait could only be made on day 1 of the hearing. It turned out that the FCDO had not dealt with this matter in relation to potential witnesses giving evidence from Kuwait and a direct request needed to be made via the British embassy in Kuwait City. Despite some thought being given to Mr Atcha travelling to the embassy to get immediate permission to give evidence ('*over the counter*' as it were), but it was agreed that this was not realistically possible within the constraints of the initial final hearing dates.
14. Accordingly, I concluded the original final hearing dates, by hearing the available respondent witness evidence by day 3, (in reality Mr Seedat was unavailable to give evidence on day 4 due to a personal matter which I accepted) and I agreed to re-list the hearing for a further 3 days before me on 5, 6, 7 and 10 December 2022 to hear Mr Atcha's evidence, followed by the claimant's evidence, with final submissions and deliberation hopefully leaving time for an oral judgment to be delivered. Unfortunately, however, it turned out that this was not possible, and it was necessary to reserve judgment.
15. Given the time elapsed between the two periods of hearing, it was necessary for me to use 5 December 2022 as a reading day in order that I could review the evidence heard to date and this was no doubt of assistance to the parties. On day 2 (6 December 2022), Mr Seedat gave evidence. This was followed by the evidence of Mr Atcha who had helpfully travelled to the UK in order that he did not require FCDO authorisation. His evidence was understandably lengthy, and it was not concluded until lunchtime on 7 December 2022 (Day3 of the resumed hearing). This was followed by the claimant's evidence, which was not concluded until 10 December 2022 (being day 4 of the resumed hearing), followed by Mr Usman, who was interposed during the claimant's evidence (who was released temporarily from his oath), because of his limited availability. Accordingly, there was only time for final submissions to heard before the resumed final hearing concluded. This unfortunately, caused additional delay in additional chambers time having to be found for deliberation to take place.
16. The claimant was unrepresented but nonetheless gave a very competent cross examination and should be commended for the hard work that he put into presenting his case. Nonetheless, I took into account his unrepresented status in accordance with Rule 2 of the Tribunal's Rules of Procedure (known as the '*overriding objective*') and relevant sections of Equal Treatment Bench Book relating to unrepresented parties. Although the claimant had alluded to

dyslexia in his claim documents, he did not seek any support during the hearing. However, he was allowed plenty of time to present his case and I sought not to hurry him in his cross examination of witnesses insofar as it was proportionate given his circumstances.

Findings of Fact

Background concerning the respondent

17. The respondent Amanat Charity Trust trading as Ummah Welfare Trust ('UWT') is a charity which provides funding for project implementation through third party partner organisations relating to relief and development. across 20 countries. At the time that proceedings were commenced, UWT employed 60 people in Great Britain and 29 of these worked at the same location as Mr Ayob at its Head Office in Bolton. It was also understood that UWT operated a number of charity shops and other employees were engaged in this side of the charity which assisted with the raising of funding.
18. UWT was managed by a board of trustees with a chair and secretary and who gave instructions to management. It is understood that they managed the monies received by UWT (which could be considerable) and were responsible for its allocation to particular individuals in need or organisations in the countries where they operated. This would involve providing funding to partners who in turn would allocate the funding in accordance with UWT's instructions. The donors might sometimes instruct UWT to use their donations for particular projects. Accordingly, it was understandable that visits from UWT staff to the countries and projects where funds were being distributed was part of the job for those involved with these distribution activities.
19. There was no dispute that some of the recipients residing in one of the 20 countries where UWT operated, could be refugees from other parts of the world. A relevant example in this case were Muslim Uyghur refugees from Western China, but who were seeking refuge in Turkey.
20. On balance and having heard the evidence from the witnesses during the hearing, I accepted that overseas travel to the relevant countries where money was distributed was a relevant part of the UWT field officer's role, even if they were largely based at the Bolton HQ for most of the year.
21. As an employer, UWT has a disciplinary policy and procedure, (pages 50 to 53 of the main hearing bundle). It emphasises the need for employees to adopt acceptable standards and that the procedure is not restricted to imposing sanctions, but also '*...helping and encouraging improvement amongst staff whose conduct or standard of work is unsatisfactory*'. It reminded employees that they should be notified of each stage of a

disciplinary hearing in writing and that all formal stages, an employee had the right to be accompanied. The need for a full investigation was stated as being required before any disciplinary decision was made and in the case of process where the employee is at risk of dismissal, the '*minimum statutory procedure*' will be followed, namely:

“Step one - a written note to the employee setting out the allegation and the basis for it.

Step two – a meeting to consider and discuss the allegation.

Step three – a right of appeal including an appeal meeting.”

Relevant issues in this case which could warrant the sanction of summary dismissal included:

- “ ...
- *Serious breach health and safety obligations/rules...*
- *Gross insubordination, including refusal or wilful and/or negligent failure to follow rules and regulations...*
- *Bringing the employer into serious disrepute...”*

22. There was an example of UWT’s contract of employment for employees within the hearing bundle (pp. 54 to 66) and it provided that in “...*the course of a member of staff’s duties they may also be required to travel throughout the UK and overseas, please refer to your job description*”. In terms of conduct, employees were expected to observe all UWT policies and procedures, and a copy of the disciplinary procedure was enclosed. I accept on balance, that Mr Ayoob would have been subject to a contract of employment with contractual terms of this nature.

23. Mohammed Athar gave convincing evidence regarding why field workers would need to be able to travel overseas. He explained that UWT would distribute large amounts of cash to its partner organisations based in the relevant country for distribution to particular beneficiaries and it was essential that where a large cash distribution was being given an appropriate UWT officer should be present for audit and safeguarding purposes. This was reasonable given that there was a risk that money would not reach beneficiary and also any problems on the day of distribution could be quickly resolved.

24. It was understood that because the distributions took place to vulnerable people in countries located in the Middle East, Indian sub-continent, Africa, other locations, they could involve more challenging conditions than might be encountered in more familiar locations. This could involve a greater risk of becoming sick or being injured, but normally UWT had in place an appropriate insurance policy and I heard convincing evidence that if necessary, they would provide funds for those employees injured or who became unwell in the line of duty.

25. I was shown a number of Field Visit Plan documents relating to visits by UWT staff at particular times and dates. They were largely specific to a visit, but followed a broadly similar structure and in many ways could be considered as the risk assessments to be used for each visit planned, although they provided information relating to objectives of the visit and anticipated budgets for the visit

The claimant and his role with the respondent

26. The claimant (Mr Ayoob) commenced employment with UWT as a Field Officer on 6 February 2017. This role was subject to a UWT contract of employment (pp73 to 79) which indicated that while his place of work would normally be Head Office, Bolton, it also said “[y]ou may also be required to work outside the UK”. It also enclosed the usual sections described above concerning conduct and enclosed a copy of the disciplinary procedure. Mr Ayoob signed the contract and agreed employment on the terms provided on 6 February 2017.

27. Mr Ayoob was then promoted and became a Regional Desk Manager – Programmes Manager - Middle East on 10 December 2018. The job description (pp.67 to 68) explained that UWT operated through regional desks which worked to implement the programmes designated to be carried out in the countries which belonged to the region in question. A specific section entitled “*Field Visits*”, identified the following responsibilities placed with each Regional Desk Manager:

- *“Devise a schedule of field trips for the Regional Team to facilitate planning, impactful programme designs, accountability and networking.*
- *Undertake field trips as determined to work priorities, co-ordinated in consultation with the Director of Programmes.*
- *Co-ordinate all travel plans within each designated country for any official visitors.*
- *Monitor health and security risks and develop safeguards to ensure the safety of all UWT visitors during any field visit.”*

28. Mr Seedat gave credible evidence that there was a need to deal with donations properly and quickly and not leave them languishing in a bank account for any length of time because money had been donated for use on relevant projects. He added that the team responsible for each regional desk would produce a breakdown of donations, ensure that the money was sent and finally arrange for checks on the ground to ensure that the donation was received using the appropriate language for the area involved. He added that it was important for UWT officers to check that there had been a proper distribution for purposes of governance and to ensure that donated money was not diverted. This did not appear to be a controversial issue and I accept that these matters were important to UWT.

29. Moreover, it was also important to ensure that each distribution was correct as can impact upon UWT's reputation with the agency being asked to distribute funds, especially when the inevitable implication arising from errors were ones of alleged financial impropriety which would undermine trust between organisations.
30. UWT asserted that Mr Ayoob was required to travel overseas as part of his job at least 3 times a year. The UWT witnesses in this case gave convincing evidence that Mr Ayoob's job was not exclusively desk bound and there was a need to travel to locations within region to ensure compliance with financial requirements when distributions were taking place. I also take judicial notice from fact that global aid is vulnerable to monies being diverted from the intended recipients when it reaches their country or region. It is therefore understandable regional managers expected to attend to supervise large transfers.

The impact of the Covid pandemic upon the claimant's travel

31. The Covid global pandemic added to the challenges facing UWT and its officers, especially with regard to their need to send officers to distributions in other countries. The UK Foreign, Commonwealth and Development Office ('FCDO') provided advice and guidance concerning travel at this time. It did not forbid travel by UK travellers but identified where it might be restricted or forbidden by a particular country and where revised immigration requirements might have been required. Mr Adat explained that in his case, there were no tourist visas available for the Indian sub-continent early on during the pandemic. Nonetheless, as the year progressed and during the summer 2020, Mr Athar said commercial flights were still possible and regional manager trips remained essential due to the cash distributions that were promised. The decision was supported by Mr Seedat and it appeared that practicability of travel rather than safety was his major concern. This was perhaps understandable given the global nature of the pandemic and a perception by him that in terms of Covid, Iraq posed no greater a risk than the UK and the management of other more traditional risks was a more important consideration.
32. In July 2020, Mr Ayoob expressed concern about the current dangers he felt were present when visiting Turkey and Iraq, which included the Kurdistan region. In an email to Mr Ahmed, he said that in relation to Turkey, the FCDO had informed travellers that travel to Istanbul and other major cities away from the Syrian border was allowed. However, in the case Iraq, the FCDO advised against all but essential travel to Iraq including the Kurdistan region. Moreover, Iraqi airspace was closed to all commercial flights, which suggested that any crossing into Iraq, must take place by road, presumably via the Turkish border into Kurdistan, (p.87). Mr Ahmed replied on 22 July 2020, seeking confirmation as to the availability of flights being available. He also added that the Covid pandemic meant that no insurance was available

and UWT would instead “...look after employees if they were affected by Covid and pay for quarantine.”. Mr Ayoob said that the point of his emails was that it was not safe to travel, and alternative plans should be put in place.

33. On 22 July 2020, Mr Ayoob provided details of forthcoming flights which were available in August (p.88) and that airports in Iraq were likely to reopen from 1 August 2020. Accordingly, he said in this email that he was prepared to travel to Iraq providing he received appropriate assurances from management concerning the following matters:

- *“Payment of salary during quarantine in the UK and destination – **(Clarified already)** [bold type being Mr Ayoob’s confirmation of an answer having already been provided]*
- *Payment of salary and status in case of infection resulting from activities related to work, in the UK and abroad.*
- *Long term support for those suffering sever or lasting effects resulting from any infection contracted at work”.*

34. Mr Ahmed replied in rather vague terms by saying:

“I have already clarified that the organisation will look after employees if they are infected and will give long term support if it is as a result of the journey and covid.

The way we have looked after Basharat Marhooms family and Shah Nawaz should be sufficient to understand that we go beyond our legal requirement to look after those who look after the organisation.

Although I have to say that may Allah forbid if I was affected whilst travelling I would not be seeking the above from the charity”.

Mr Ayoob replied when questioned by Ms Halsall regarding these emails and whether he was happy to travel, said ‘yes, but as the messages go on, [things] become muddier and muddier’. I felt that this was an honest and reasonable answer to give having read the email chain between Mr Ayoob and Mr Ahmed and at this point, it was not clear as to precisely he would be supported if something happened to him while travelling.

35. Mr Khan requested that enquiries be made on 24 July 2020 regarding legal advice concerning the sending of staff on field visits during the Covid pandemic and clearly recognised that additional health and safety concerns had arisen during 2020 because of the pandemic, (p.88). Mr Athar replied to him on 27 July 2020 stating that the advice of the FCDO should be followed and where only essential travel should take place, enquiries should be made with the insurers to find out what cover might be available and also consideration should be given as to “why we regard a visit as essential and that we have carried out the risk assessment and identified potential risks and how we will mitigate these risks. He also advised that due “...to the exclusion stipulated by the insurers, there is no cover available for any Covid 19 related

illnesses...UWT will have to fund the treatment and if required the repatriation costs”.

The conclusion reached by UWT at this point was that consideration should be given to whether a journey was necessary, risk assessments should take place for those trips deemed necessary and that where no insurance cover was available, UWT were responsible for the medical and related costs of employees becoming ill through Covid.

36. It became clear late in August 2020 that someone might be required to travel to Iraq to supervise the cash distribution due to take place there. In conversation with Mr Seedat, Mr Ayooob was aware this journey should take place at some point during September 2020. On 20 August 2020, he emailed Mr Athar and recommended to him that there should be no travel to Iraq for the moment. However, he reminded him of a recent discussion and that he would travel subject to clarification regarding the two remaining questions identified in his earlier correspondence, above (p.91). Mr Athar replied advising that the partner organisation in Iraq confirmed it was safe to travel and that UWT would ensure the relevant PPE was made available to staff travelling. He added that reasonable medical expenses will be paid, working from home if quarantine was required would be paid although additional payments arising from ill health while abroad were discretionary, past practice has been to pay staff *‘full on merit when they become ill/injured during a field visit’*.
37. Mr Ayooob’s view in his email of 1 September 2020 (p.92) was that he understood the need for field visits when there was a cash distribution but that they should be delayed until the situation improved. Mr Athar replied on 3 September 2020 requiring him to travel to Iraq to oversee payments and that this trip should take place immediately. On the same day, Mr Ayooob stated in his email that *“As the trustees are not willing to underwrite the gap left by the lack of travel and business insurance and cover the staff adequately in the event of any adverse effects resulting from the travel or infection, I will NOT be travelling in this instance.”*
38. Mr Athar responded on 4 September 2020 (p104) expressing his disappointment at Mr Ayooob’s decision and appeared to read his refusal to travel as a question of available insurance and he reminded him of a precedent whereby UWT had provided *‘reasonable cover’ to individuals affected ‘by incidents in the field’*. He also reminded him that it was essential to be present when distributions took place and it had only been allowed before for a smaller amount and when the Iraqi government had travel restrictions in place. Instead of Mr Ayooob travelling, arrangements were made for other members of staff to go instead and plans for Maulana Adam and Mr Ubaid were proposed so that a distribution could take place on 9 September 2020.

39. There was clearly a concern on the part of UWT trustees and senior management that the beneficiaries of the charity should come first and field staff had a duty to support these activities. I accept that this is an understandable position to take when you run a charity which is responsible for the distribution of monies for charitable benefit. However, by September 2020, a breakdown in communication had taken place between Mr Ayoob, Mr Athar and others within UWT. Mr Ayoob expressed a position which focused upon the need for an unequivocal answer to be given concerning the level of support available should he travel and become unwell. Mr Athar's increasing frustration is clear within his email correspondence as he felt that he had made the position clear regarding support in the absence of insurance cover. Unfortunately, his replies did not make a formal commitment to support in the event of ill health, but instead continued with reassurance based upon aspiration and past examples rather than an express offer to provide reassurance. It was perhaps understandable given that the trust did not wish to make an open-ended commitment, but it does seem that an opportunity was missed in resolving this matter before Mr Ayoob refused to travel at the beginning of September.

The risk assessments

40. Mr Athar explained that the preparation of risk assessments rested with area managers who were responsible for the staff operating within those areas. Mr Seedat expressed a concern that policies could not be too formal as "*...you can't write everything down*" and a more practical approach was required. His view was that the risk assessments were very much the responsibility of the desk manager for the region in question. Mr Ayoob said that the general principle was that whoever was travelling would complete the relevant plan.

41. A number of risk assessments were available within the hearing bundle and within the additional bundle that was provided during the hearing. They formed part of the Field Visit Plan for a particular region, and they appeared to be updated on a regular basis. An example was the Ethiopia Field Visit Plan for May 2019, (pp81-86). This was prepared by Mr Ayoob and his name was indicated at the beginning of the document. He identified a visit of 10 days, with the objectives briefly described the travel budget and a checklist of equipment that should be carried for the visit. A specific table was also included with columns identifying the risk subject, the actual risks, the likelihood of occurrence (L/M/Hi = Low/Medium/High), the impact upon the employee (Low/Medium/High) and what were described as 'Mitigation Strategies' which included limiting, avoiding and transferring the risk in question.

42. The risks envisaged covered a number of issues including cancelled or delayed travel arrangements, crime (ranging from petty crime to terrorism) and significantly for this case (within the area marked 'Health'; 'Transmissible diseases' and 'Poor Health Facilities'. The mitigation strategies included (in

the case of health issues, ensuring vaccinations were up to date, avoiding the exchange of body fluids and generally maintaining food/water hygiene. Notes were provided at the foot of the table identifying the infectious diseases which were a problem in the region being visited as well as specific advice regarding rabies prevention if bitten or scratched.

43. The additional bundle included 10 other Field Visit documents over 57 pages and these were as follows:
- a) Indonesia (2018)
 - b) Pakistan (2019)
 - c) Ethiopia (2020)
 - d) Turkey (2020)
 - e) Gambia (2020)
 - f) Sierra Leone (2020)
 - g) Gambia (2019)
 - h) Pakistan (Ramadhan) (2018)
 - i) Albania & Macedonia (2018)
 - j) Sierra Leone (2019)
44. It is not necessary to discuss these documents in detail, but I note and accept that the Plan identified the UWT officers travelling including witnesses who gave evidence to the Tribunal including Mr Akhtar and Mr Ayoob. These documents were the subject of limited cross examination of witnesses however, it was noted that the documents provided a section marked 'Context' including a reference to the quality of the team working in the subject country, reference to recent natural disasters (such as an earthquake and Tsumani in Indonesia in 2018) and the ongoing historic challenges strategic importance of a region in terms of donation, (such as East and West African countries). Each document included a risk assessment table with Health being an Area under consideration and the usual generic descriptions described in the previous paragraph.
45. However, it was noted that the more recent Field Visit documents included reference to Covid with (in the case of the Ethiopia July 2020), requiring '*For Covid, undertake relevant testing before and after journey + use mask/sanitiser and observe national guidelines. Observe isolation as per guidelines if tested positive.*' For the proposed Turkey 2020 visit, there was reference in the travel budget to PCR tests for Manchester airport and in the additional guidance section, it was specifically recorded (under a heading of 'COVID19') that '*Travel to Turkey is not restricted due to COVID19. Safety measures are in place within the country such as social distancing, wearing of face masks etc. All people are required to abide by COVID19 rules etc.*' The requirement to limit and avoid risks, required '*COVID19 kits including masks, sanitisers etc. will be taken*'.

46. I did not see evidence that a Field Visit document was produced by Mr Ayoob in relation to the Iraq trip in 2020 and such a document was not included in either bundle.
47. To some extent, reading these documents at the time of the final hearing, suggested a vague and minimal provision of information and advice from UWT to its staff in these documents. However, I take judicial notice of the general state of knowledge and advice concerning Covid19 during 2020, which was of course at a time when an effective vaccine had not been developed and even the availability of testing kits was limited. Government advice changed on sometimes a daily basis and the general understanding during the summer of 2020 was that while there was a limited opening of society, it was restricted by social distancing, mask wearing and limited gatherings.
48. However, I also acknowledge that at this time, there remained an ongoing duty to provide essential services. I have no doubt from the evidence that I heard, that UWT as a charity handling large sums of donor money for distribution to a number of international locations, involving jurisdictions where the transfer of these large sums electronically (in a way familiar to many people in this jurisdiction), required resilient arrangements with a senior UWT manager present so as to ensure the money reached its intended recipient. Mr Adat gave credible evidence as one of the original UWT trustees and as an accountant concerning the necessity of field visits. He said that managers such as Mr Ayoob had a role which was *'predominantly to be out in the field...'* and that as a charity dealing with poverty where suffering continued, required regional managers to travel to the relevant locations. On this basis, I accept that these visits remained essential and necessary throughout the pandemic period and certainly during 2020.

Deterioration of relations between claimant and respondent

49. There was no previous evidence of capability or conduct issues involving Mr Ayoob, although Mr Seedat questioned whether Mr Ayoob was *'sufficiently self-reliant'*. Mr Ayoob believed he had a good relationship with his colleagues but admitted that *"I do speak my mind and when my colleagues required support I would advocate for them. At some times I felt that Mr Seedat would be unhappy that I questioned him...I would get annoyed if not kept informed...[and]...I might amend the tone of an email that he wanted me to send"*.
50. On 7 September 2020, the Iraq visit was recorded as proceedings, but by this point it was Maulana Adam and Ubaid Chowdhury who were travelling, although there was some uncertainty raised as to the timing given the ongoing situation with the pandemic and the need for these staff members to have results provided from their recent Covid tests at this time, (p.105). As a manager responsible for this region, Mr Ayoob said that he remained in

contact with them concerning their travel, progress and their delivery of the project.

51. On the same day, Mr Ayoob alleged that a meeting took place at 5:30pm with Mr Athar in the main board room and where he was told to consider his future with the charity. Mr Athar was alleged to have said that he was not '*...getting on with Mr Sedat.*' When asked whether this was because of a '*performance issue*', Mr Ayoob said that Mr Seedat replied that '*it was more of a personality issue*'. Mr Ayoob said that he asked for a week to consider this.
52. Mr Ayoob said that on 14 September 2020, he was invited to a further meeting by Mr Athar in order that he could explain his decision following the previous week's discussion. Mr Ayoob said that as he was fulfilled in his job, was performing well, had young children and was in the process of buying a house, he wished to remain in his post. On the same day, it was confirmed that Mr Ayoob would be subject to disciplinary action. Mr Athar gave limited evidence concerning these meetings, but disputed that he was seeking to '*manage out*' Mr Ayoob from UWT stating that '*I did not tell you to leave, I asked you to consider your position*'. He confirmed that earlier on 4 September 2020, he was disappointed by Mr Ayoob's refusal to travel in his email and that he wrote to him on 14 September 2020 confirming that a disciplinary process would be commenced, (p104).
53. I accept on balance that that the meetings described by Mr Ayoob occurred as alleged on 7 September 2020 and 14 September 2020 and there was clearly a concern expressed by Mr Athar and presumably Mr Sedat, that Mr Ayoob was becoming a problem for UWT. Mr Athar's reply during his evidence that he did not tell Mr Ayoob to leave, appeared to be '*splitting hairs*' and it was implicit from these discussions suggests that he was being encouraged to consider resignation as an option. However, Mr Athar was not the dismissing officer at the disciplinary hearing and the disciplinary hearing began following the second of these two meetings.

Disciplinary process

54. On 14 September 2020, the disciplinary process against Mr Ayoob began with Mr Athar sending a letter to him (p.108) explaining that disciplinary action was being considered in relation to two matters:
- a) "*Gross insubordination, including refusal or wilful and/or negligent failure to follow instructions – this relates to a trip to Iraq and refusal even though the charity offered the same cover as Insurance and it was important to travel.*
 - b) "*Bringing the employer into serious disrepute – providing incorrect information regarding beneficiaries amounts received which subsequently*

led the partner organisation to review the partnership as their integrity was questioned without justification.”

The allegations were suggested as amounting to serious misconduct rather than gross misconduct and Mr Ayoob was invited to a disciplinary meeting on 16 September 2020 and was reminded of his right to be accompanied. This letter was consistent with the principles set out in the UWT Disciplinary Policy and Procedure, (p.50).

55. The initial disciplinary meeting took place on 16 September 2020 with Mr Athar acting as investigation officer. Mr Ayoob was present and Mr S Khan who is the Projects Finance Manager was also there. Mr Ayoob was reminded of the grounds supporting the disciplinary action. In relation to the travel to Iraq, Mr Ayoob explained that he felt he did not have a sufficient assurance about what provision would be made by UWT for an employee infected by Covid in the absence of insurance cover. He felt that he took the work required of him, apart from the travel and took his instructions as being that he should “...*make arrangements to travel for those willing to travel.*”
56. Turning to the second allegation, Mr Ayoob was accused of providing incorrect information relating to the Uyghur distribution where the partner organisation (understood to be an organisation called ‘IHH’), is asked to verify that the money has been received by the beneficiaries. Mr Ayoob as was alleged to have provided a sample of the donations in this tranche to the Uyghur beneficiary who then queried what IHH had provided. This caused embarrassment and potentially undermined the relationship with the partner organisation. This caused embarrassment because the partner organisation was left felt that their integrity was being questioned without justification. Mr Ayoob disputed that he had provided the information to Shahnawaz Khan on the understanding that it was not ready for sharing.
57. Mr Athar informed Mr Ayoob by email on 6 October 2020 that it had been decided to take the disciplinary matter further in order that the allegations could be discussed further, with another manager or trustee being involved. Mr Ayoob replied expressing his disappointment with the decision and sought further information. An investigation began on 13 October 2020 chaired by Mr Adat and a report was produced by him afterwards, (pp132-141). A number of individuals were interviewed including Mr Ayoob. Mr Athar concluded that there was a case to answer in relation to both allegations. On 29 October 2020, a letter was sent by Mr Atcha to Mr Ayoob explaining that the matter would proceed to a disciplinary hearing on 6 November 2020 and that 3 allegations would now be considered, which could amount to gross misconduct and could result in his dismissal. The allegations were as follows:
- a) Gross insubordination, including refusal or wilful and/or negligent failure to follow instructions – this relates to the trip to Iraq and refusal even though

the charity offered the same cover as Insurance and it was important to travel.

- b) Bringing the employer into serious disrepute – providing incorrect information regarding beneficiaries amounts received which subsequently led the partner organisation to review the partnership as their integrity was questioned without jurisdiction.
- c) Failing to carry out proper risk assessments for the visit to Iraq.

Mr Ayoob was informed that he could be accompanied.

58. The hearing took place on 6 November 2020, but it was necessary to hold a second hearing on 10 November 2020 in order that a further investigation could be carried out relating to the following questions, (pp.194-195):

- a) If Mohammend Athar had taken over the risk assessment from Mohammed Ayoob.
- b) Was it illegal to send someone to Iraq?

59. The second disciplinary hearing took place on 10 November 2020 and again chaired by Mr Atcha and Mr Zakir Patel. A note was provided of the meeting in summary form, (pp.196 to 199).

60. The decision of the disciplinary hearing panel was provided to Mr Ayoob on 19 November 2020 in a detailed letter, which dealt with each allegation in turn, (pp211 to 215). In relation to the 3 allegations, in summary, the conclusions were as follows:

- a) Travel to Iraq – it was found that the allegation of gross insubordination was well founded in that Mr Ayoob refused to travel or failed to follow instructions to travel. It was made clear that UWT's function required field workers including the Regional Manager role to make such trips and urgent nature of the donations meant that it was essential that Mr Ayoob travelled to Iraq. It was made clear that no special circumstances had been identified by him at the time which would have justified his refusal to travel during the pandemic.
- b) Bringing the employer into disrepute – this allegation was also upheld because Mr Ayoob was found to have provided information to Mr Nawaz and the beneficiary organisation which indicated that beneficiaries had received less than had been allocated to them. This caused the beneficiaries to question the partner organisation. It was found that Mr Ayoob was responsible for providing the information and strained ties with the partner organisation which made the relationship more difficult and, in an environment, where Islamic charities already faced difficulties in distributing funds.
- c) Risk assessment – relating to his alleged failure to undertake a proper risk assessment was also well founded. This was because as manager, Mr Ayoob was responsible for providing the risk assessment and a junior employee travelled to Iraq without a completed risk assessment, which

was a breach of field policy and was especially problematic given the ongoing pandemic. It was noted that this failure was surprising given the concerns previously raised by Mr Ayoob to management regarding the dangers of travel.

61. It was explained that each of these allegations amounted to gross misconduct and/or gross negligence in accordance with UWT's disciplinary policy. The letter noted that an employer did not have to necessarily dismiss an employee once a finding of gross misconduct was identified. Mr Ayoob's length of service was noted, but this was balanced against the magnitude of the 3 allegations proven to be well founded by the disciplinary hearing panel. Finally, it was explained to Mr Ayoob that he had not expressed any insight or remorse concerning these allegations. It was determined that summary dismissal was appropriate and not a lesser sanction such as a final written warning with dismissal effective from 20 November 2020. A right of appeal was advised within the letter.
62. Mr Ayoob gave notice of his right of appeal by email on 25 November 2020, (p.217-218). He referred to health and safety concerns and FCDO advice during the pandemic in relation to his refusal to travel. He argued that he did not know that the beneficiary would challenge the partner organisation about the information provided and that he assumed Mr Athar dealt with the risk assessment once it was clear that he was refusing to travel.
63. The appeal hearing took place on 9 December 2020 and Mr Rawat acted as the appeal hearing manager. The hearing was recorded as lasting just over 50 minutes and a note was provided, (pp. 219-235). There was a clear discussion between Mr Ayoob and Mr Rawat and a decision letter was produced on 22 December 2020 confirming that the decision to dismiss was upheld and still stood, (p.236). Mr Ayoob expressed his disappointment in the short 3 paragraph letter in an email dated 24 December 2020. The letter was short and did not explain why the decision had been reached, although a full detailed and reasoned letter had previously been sent in support of the disciplinary hearing which led to Mr Ayoob's dismissal.
64. Mr Atcha in his evidence explained that when reaching his decision that had Mr Ayoob explained that there were medical or other personal reasons (such as being frightened of catching Covid19), which justified his refusal to travel at the time, he would have been '*very supportive*'. He added that the difficulty was that Mr Ayoob provided no explanation. He felt that he had been provided with enough opportunities to reconsider his decision not to travel.
65. Mr Atcha also stressed the importance of the verification process and that in relation to this allegation, Mr Ayoob was disciplined because of the problem with the information which he provided. It was accepted that there was no dishonesty, but there was a concern that money had not been allocated

properly. However, he conceded in cross examination that he was not sure whether this allegation alone, would have proceeded to disciplinary action as there were repeated comments made about discussions taking place to improve performance.

66. Mr Atcha's evidence before me during the hearing gave a clear impression that the real reason for the decision to dismiss was connected with the refusal to travel to Iraq in 2020 and his failure to take responsibility for the risk assessment. Although repeated in a number of different ways during his cross examination by Mr Ayoob, I found it quite revealing when he responded by saying "*...the point is , you chose not to go, you then sent someone else and then didn't do a risk assessment. You have an obligation to look after these people...there is a risk assessment process with a greater risk of Covid19, [a risk assessment] had to be done.*"

67. As a consequence, it was clear that Mr Ayoob was dismissed following a disciplinary process, although on balance, I conclude that this process arose from the refusal to travel, his willingness to let junior colleagues travel and the absence of a medical or other explanation being given. Of course, this decision needs to be considered in the context of a charitable organisation, which manages huge amounts of money and distributes them in the relevant countries often with the support of third parties. The trust of the donors is key, as is the confidence in the third party organisations and beneficiaries and a degree of trust existing between all involved.

68. Mr Atcha gave convincing evidence regarding the demographics of the donor base being 99% individuals who wish to support religious charities. Many donors gave under the Islamic principle of '*Zakat*' which I understood requires all Muslims reaching a certain wealth threshold to donate 2 ½% of their total savings or wealth to charity. UWT were subject to scrutiny by the Charities Commission and the organisation prided itself on charity. I do not doubt how important it was for UWT to ensure funds were properly allocated. However, while there were concerns regarding Mr Ayoob provided erroneous data, it seemed to be less of an issue for UWT than compared with the refusal to travel. It is difficult to see how that failure alone would have justified formal disciplinary action for a first error, let alone a decision to dismiss for gross misconduct. It may have caused some embarrassment, but nothing that appeared to undermine the UWT work or enable an individual to take advantage and I find that had this been the only failure by Mr Ayoob, it is likely that this alone would have resulted in the ending of his employment.

The law

Unfair dismissal

69. Part X of the Employment Rights Act 1996 ('ERA') deals with complaints of unfair dismissal. Section 94 of the ERA confirms that an employee has a right not to be unfairly dismissed.
70. Section 108 of the ERA provides that an employee must have been continuously employed by the employer at the effective date of termination in order to bring a complaint of ordinary unfair dismissal.
71. Under section 98(1) of the ERA, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).
72. The reason for the dismissal is the set of facts or the beliefs held by the employee which caused the employer to dismiss the employee. In determining the reason for the dismissal, the Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal; see W Devis and Sons Ltd v Atkins 1977 ICR 662.
73. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and substantial merits of the case.
74. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Burchell 1980 ICR 303 (and referred to by Ms Halsall in her submissions), the Tribunal must consider a threefold test:
- a. The employer must show that he believed the employee was guilty of misconduct;
 - b. The Tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief; and
 - c. The Tribunal must be satisfied that at the stage at which the employer formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.
75. However, it is not for the Tribunal to substitute its own decision as to the reasonableness of the investigation. In Sainsburys Supermarkets v Hitt [2003] IRLR 23 the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted.
76. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of

Practice of 2015 on Disciplinary and Grievance Procedures. That Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most cases. Under section 207 of the Trade Union & Labour Relations (Consolidation) Act 1992, in any proceedings before an Employment Tribunal any Code of Practice issued by ACAS shall be admissible in evidence and any provision of the Code which appears to the Tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

77. In Polkey v Dayton Services Ltd [1988] ICR 142, it was stated that if an employer could reasonably have concluded that a proper procedure would be “utterly useless” or “futile”, he might be acting reasonably in ignoring it. The Polkey principle established by the House of Lords is that if a dismissal is found unfair by reason of procedural defects then the fact that the employer would or might have dismissed the employee anyway goes to the question of remedy and compensation reduced to reflect that fact.
78. Section 122(2) of the Employment Rights Act 1996 provides that where the Tribunal finds that any conduct of a Claimant before the dismissal was such that it would be just and equitable to reduce the amount of the Basic Award, the Tribunal must reduce that amount accordingly.
79. Section 123(6) of the Employment Rights Act 1996 provides that where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the Claimant, it must reduce the amount of the compensatory award by such proportion as it considers just and equitable.
80. The Tribunal must award compensation that is just and equitable. Even if the loss arising from the dismissal is substantial, the Tribunal can still award no compensation if it would be unjust or inequitable for the employee to receive it.

Wrongful dismissal

81. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee’s employment.
82. A claim for notice pay is a claim for breach of contract and conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.
83. In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract.

Discussion

Does the claimant have enough continuous employment under s108 ERA?

84. Mr Ayoob worked for UWT from 6 February 2017 until 19 November 2020 and has sufficient continuous employment of more than 2 years, to be able to bring a complaint of unfair dismissal.

Was there a dismissal?

85. The respondent accepts that the claimant was subject to a summary dismissal by UWT on 19 November 2020

What was the principle reason for the dismissal?

86. UWT dismissed Mr Ayoob for gross misconduct and conduct under the ERA can be a potentially fair reason for dismissing an employee.

87. There were 3 reasons advanced by UWT for dismissing Mr Ayoob and these were as follows:

- a) Gross insubordination, including refusal and/or negligent failure to follow instructions. This was attributed to Mr Ayoob's refusal to travel to Iraq, despite UWT offering him appropriate insurance cover.
- b) Bringing the employer into serious disrepute. This was attributed to the provision of incorrect information relating to beneficiaries of UWT charity funds and causing UWT's partner organisation in Turkey to question UWT's integrity.
- c) Failing to carry out proper risk assessments for a visit to Iraq.

88. Mr Atcha was the decision maker in Mr Ayoob's disciplinary process and decided to dismiss him. The appeal did not affect this decision.

89. As I explained above, I found on balance of probabilities, Mr Atcha's evidence as dismissing officer during the hearing confirmed that the real reason behind the decision to dismiss was the refusal to travel to Iraq and that this was found to be gross insubordination and to a lesser extent the failure to complete the risk assessment for that visit. This second finding appeared to have been '*bolted on*' to the disciplinary process as the investigation proceeded. It was clear that the serious disrepute issue involving incorrect financial information was a matter of concern, but Mr Atcha accepted that this was something which would not normally warrant formal disciplinary action by itself, with informal action being appropriate.

90. The actual dismissal letter sent to the claimant following the disciplinary hearing suggested that all 3 allegations were considered by Mr Atcha to be

well founded and all 3 constituted gross misconduct. Nonetheless, having considered the evidence, my conclusion was that the principle reasons for the dismissal as decided by Mr Atcha, were the refusal to travel, aggravated by the failure to complete the risk assessment, with the financial disclosure allegation being a lesser conduct issue. While it would have been better for the letter to have discussed the relative magnitude of the 3 allegations, I accepted that Mr Athca had reasonable grounds to find the allegations proven and most importantly, the refusal to travel alone was sufficiently serious to amount to conduct which was sufficiently serious, (especially once the risk assessment failure had been considered proven as well), to compel him to consider dismissal as a sanction.

Fairness

91. It is important that I do not substitute my views concerning the decision to dismiss over the actual decision made by Mr Atcha. He did give full and frank witness evidence to me and I concluded that Mr Atcha believed that Mr Ayoob was guilty of misconduct, albeit in relation to two out of the three allegations.
92. UWT is a reasonably large employer and has access to professional advice and had policies and procedures in place when dealing with disciplinary matters. Mr Ayoob as an employee of UWT, was subject to the disciplinary procedure and potential issues which might warrant summary dismissal are serious breaches of health and safety obligations, gross insubordination and bringing the employer into serious disrepute. Effectively, these breaches related to the three allegations which Mr Ayoob ultimately faced at the disciplinary hearing. The health and safety obligations were not expressly stated in relation to the risk assessment failure, but it was implicit from the subject matter that this was a health and safety breach.
93. Initially, the refusal to travel to Iraq and the financial error in relation to the provision of incorrect information were the allegations included in the notice of a disciplinary process on 14 September 2020 and as I have described already, the main reason behind the formal action being taken was the refusal to travel. The addition of the third allegation relating to the risk assessments came later following the investigation meetings on 16 September 2020 and the October 2020 interviews which formed part of the investigation report. It was clear to me that Mr Adat was appointed as the investigating officer who understood his responsibilities and who interviewed a number of witnesses including Mr Ayoob.
94. This was not a disciplinary procedure which was rushed, and I am satisfied that Mr Atcha only made his decision following a disciplinary hearing where a detailed investigation had taken place and where the charges had been explained to Mr Ayoob. He was allowed to participate in the disciplinary hearing and appeared unable or unwilling to advance mitigating circumstances which justified his reason not to travel to Iraq. While anxieties

regarding Covid19 were a real issue at the time, the nature of the field officers' work was that they were expected to travel, and their work was essential. The failure to provide any medical or personal reasons to justify the non attendance contributed to Mr Atcha's conclusion that the gross insubordination allegation was made out.

95. It was correct that managers could have been better in reassuring Mr Ayoob about the protection afforded to employees who became ill while travelling abroad and where insurance cover might not be guaranteed. Nonetheless, I accept that there was a clear understanding that UWT would look after its employees who would become ill and as I explained in the findings of fact, it was an issue which could have been better discussed with Mr Ayoob.
96. However, while the UK faced a great deal of restrictions during the summer of 2020, UWT as an international charity with obligations abroad was primarily concerned about the distribution of aid which was connected with the provision of resources in areas where a great deal of hardship was encountered. Field officers needed to travel abroad and the only thing which prevented their travel were the restrictions imposed by the UK and the destination countries abroad. Mr Atcha and other witnesses gave clear evidence about the inherent risks of travel to the destination countries by reason of their recent histories and I took judicial notice of the fact that the FCDO was risk averse in the guidance that it would give, and this was understandable given its concern to protect British citizens wishing to travel. Inevitably, it would always be the case that UWT would need to travel regardless of that guidance if it was possible to travel, but FCDO concerns would feed into the travel plans and risk assessments prepared for each trip.
97. Covid caused a great deal of alarm across the globe and in a way which perhaps made it seem more hazardous than many of the other diseases which could be encountered in the destinations UWT travelled as well as more prosaic but nonetheless potentially lethal hazards such as road traffic accidents, which were referred to in the witness evidence that I heard. There were individuals who shielded at this time and upon notifying their employer, would be restricted in the way in which they carried out their work. This was something that was not asserted by Mr Ayoob and while he may have had anxieties, UWT was doing the best it could to comply with testing as required and to obtain and use PPE as described in the risk assessments referred to in the hearing bundle.
98. The dismissal in relation to the misconduct established as a result of the refusal to travel was sufficient in itself to justify the dismissal and as such, I do find that the dismissal was fair and arose from a fair process where Mr Ayoob could have provided arguments to demonstrate why his refusal was reasonable. But this refusal had to be considered in the context of a field officer who was expected to travel on regular basis to countries or regions or

countries which faced greater hazards than what might reasonably be expected at a typical holiday destination encountered by British travellers. It may seem harsh, but Mr Ayoob's job was one where the travel was an essential service and one where donors and recipients relied upon field officers travelling, (subject of course to legitimate and evidenced medical issues arising at any time with those officers).

99. I have already mentioned above, that the other two matters (risk assessment and financial information issues), were considered well founded and qualifying as gross misconduct under the disciplinary policy. I could not conclude that they in themselves, amounted to offences which could justify a fair dismissal. Mr Atcha's evidence convinced me that these two allegations while important, would not have resulted in a dismissal by themselves. They appear to have been added to process following the refusal to travel and while that is not unfair, it did confuse the disciplinary hearing officer to some degree.

100. But even allowing for this difficulty, I must conclude that it does not affect the overall fairness of the decision, because the primary allegation was made out. That allegation was a feature of the entirety of the disciplinary process and Mr Ayoob was afforded every opportunity to rebut, clarify or qualify his refusal to travel. Accordingly, the failure to properly assess the gravity of the other two allegations in terms of relative magnitude with the refusal to travel, does not in my view prejudice the overall fairness of the decision to dismiss. This is because it makes no difference to the legitimacy of the decision in relation to the primary allegation of the refusal to travel, which was well made out and amounted to a fair dismissal by reason of conduct.

Procedure

101. At the time that he formed his belief that there was misconduct on those grounds described above, Mr Atcha was satisfied that UWT management had carried out as much investigation as was reasonable in the circumstances.

102. In terms of procedure, Mr Ayoob was informed of the steps taken in the process from the initial investigation until the confirmation of a disciplinary decision. Mr Ayoob asserted in his grounds of complaint that the disciplinary process was commenced without a formal investigation phase. However, while the investigation process was a little messy as it appeared to commence with several investigation meetings, it followed sufficiently the procedure identified in the UWT disciplinary procedure. Moreover, it was not a process which was rushed, or delayed unduly.

103. Mr Ayoob said that when the investigation took place, the investigating officer failed to take account of any evidence that rebutted the allegations

made against him. Ultimately, he argued that there was *'clear logical contradictions between the evidence and the conclusion of the investigation'*. He believes that the dismissing officer and the appeal panel ignored these issues. However, having heard the evidence during the hearing and considered the documents, I am satisfied that the procedure was properly applied with no attempt being made to rush the process and time being taken to interview witnesses and produce an investigation report. Mr Ayoob was notified of his right to be supported by a representative and in addition, he was allowed to appeal the original decision, which took place before another person not connected with the original process.

104. Although it was not the subject of specific submissions from either party, I did note in the findings of fact, that there was a discussion between Mr Ayoob and Mr Athar on 7 and 14 September 2020 where Mr Athar asked Mr Ayoob to consider resignation as an option. This conversation could of course constitute a settlement negotiation conducted between an employer and employee with a view to ending the employment relationship. As a consequence, it appeared to me that these discussions may have been covered by section 111A ERA 1996 and accordingly, cannot be relied upon as evidence in an unfair dismissal complaint. However, even if this is not the case, the discussions appeared to relate to a breakdown in relations between Mr Athar and Mr Ayoob. Mr Ayoob was the subject of a disciplinary investigation and the process did not involve Mr Athar and these meetings are separate from the disciplinary process and not relevant to the decision to dismiss.

Band of reasonable responses

105. It was clear that Mr Atcha considered sanctions stopping short of dismissal. However, given the nature of the proven allegation relating to the refusal to travel, it was within the context of his field officer role. This role with the expectation and requirement to travel was one where dismissal could be considered as a reasonable sanction to be imposed. Mr Ayoob was made aware of this during the disciplinary process.

106. Mr Atcha was clear in his dismissal letter and also in his witness evidence during the disciplinary hearing that he considered imposing a lesser sanction such as a final written warning and took into account Mr Ayoob's service. However, the absence of a justifiable reason for the refusal and a perception of an unwillingness to accept any wrongdoing, means that I agree that the sanction was within the band of reasonable responses available to a manager in this scenario.

107. I would add that this decision could be construed as a harsh one given the circumstances existing in 2020 with the Covid19 pandemic. But while I accept this could be one way of looking at it, I did consider Mr Atcha's evidence and that of his colleagues which identified the particular nature of

the field officer role, the essential nature of travel as part of their work and that they were occupying roles where elimination of risk was not possible. Good management of health and safety matters through risk assessments and other guidance and support was how field officers managed their work in the field and they did not occupy the sort of role typically encountered in this Tribunal. Travel was something which had to continue and was a key part of the field officer role.

Polkey

108. I am satisfied that Mr Ayoob was dismissed for a fair reason of conduct in relation to the refusal to travel, that dismissal was within the range of reasonable responses available to Mr Atcha and that this arose from a fair procedure.

109. However, even if I am wrong in reaching this conclusion, whether it relates to the process or the inclusion of lesser allegations in the disciplinary process, I do conclude that the adoption of a different procedural approach would still have resulted in a dismissal.

110. This is because a decision by Mr Atcha to modify the process in relation to allegations brought or explore the question of some other substantial reason being a reason rather than conduct would have simply delayed Mr Ayoob's dismissal. This was because of his refusal to travel at the time in a role where travel was an essential part and where no disability or medical reason which affected capability had been advanced. For the avoidance of doubt, this is not to say that the dismissal in its actual form was unfair. These additional comments are simply provide to explain that the situation faced by UWT was once where Mr Ayoob's continued employment in his role was no longer viable where he refused to travel.

Contributory fault

111. Mr Ayoob has been found to have been fairly dismissed and contributory fault is not directly relevant to my decision as a consequence. However, had this not been the case, this was a matter where his refusal to travel would have resulted in significant contributory fault being awarded against him which I anticipate would have amounted to two thirds deducted from the compensatory award.

Wrongful dismissal/Notice pay

112. Ms Halsall argued that each of the 3 grounds behind the decision to dismiss Mr Ayoob, could amount to gross misconduct, with each matter striking at the heart of his employment with UWT. As a consequence, she says that they could dismiss without notice.

113. For the reasons given above, I disagree that the disclosure of incorrect information for what appeared to be a first offence would have been gross misconduct for the reasons discussed above. Similarly, I am not convinced that the failure to produce risk assessment could amount to gross misconduct.

114. However, I do feel that the primary allegation of the refusal to travel was gross misconduct. It was made clear to UWT in correspondence and was maintained throughout the disciplinary process without any justifiable explanation being provided. This was something which struck to the heart of Mr Ayooob's employment with UWT entitling them to dismiss him without notice.

Conclusion

115. As a consequence, I must make the following decisions in relation to the claim:

(a) The complaint of unfair dismissal is not well founded. This means this complaint is unsuccessful.

(b) The complaint of wrongful pay/notice pay is not well founded. This means this complaint is unsuccessful.

116. I appreciate that this decision will disappoint Mr Ayooob and he worked hard during the final hearing to argue that his dismissal was not fair. However, I would like him to note that as an unrepresented party, he conducted his case in a way which was very competent and which involved a considered cross examination of the respondent's witnesses. Both the way he and Ms Halsall conducted themselves during what was a disjointed hearing process was commendable and I am grateful to them both for their assistance and understanding in ensuring that this case could be concluded over what ended up being a lengthier timescale than had originally been intended.

117. Finally, I would conclude by acknowledging that the parties have had to wait some time for this judgment and in a case which has already been delayed due to difficulties concerning the giving of evidence by some of the respondent witnesses. Unfortunately, this delay was simply caused by my workload in recent months. Sometimes hearings do not conclude with sufficient time for a Tribunal to deliberate and deliver an oral judgment and this was what happened in this case. As a consequence, it has taken longer than I would have hoped to find the time in order that this reserved judgment in this case and I am grateful to the parties for their patience in this regard.

Employment Judge Johnson

Date 21 March 2023

JUDGMENT SENT TO THE PARTIES ON
27 March 2023

FOR THE TRIBUNAL OFFICE