Case No. 1805172/2020 (V)

EMPLOYMENT TRIBUNALS

Claimant: Mr C Mathieson

Respondent: Liabilities Limited trading as MI Adjusting

Heard at: Leeds **On:** 18 and 19 January 2021
10 February 2021 (reserved decision in chambers)

Before: Employment Judge Cox

Representation:
Claimant: Mr Woolston, lay representative
Respondent: Mr Hine, solicitor

RESERVED JUDGMENT

1. The Claimant was unfairly dismissed.

2. The Respondent shall pay the Claimant a basic award of £914.60.

REASONS

1. The Claimant presented a claim to the Tribunal alleging that his former employer, Liabilities Limited ("the Company"), had unfairly dismissed him. The Company is a small firm of loss adjusters employing around 11 people. The Claimant worked for the Company as a loss adjuster. The Company's owner and Director of Claims, and the Claimant's line manager, was his father Mr Martin Mathieson.

2. The Hearing was conducted by video link. It was not practicable to hold the Hearing in person because of the impact of the coronavirus pandemic and the parties helpfully did not object to it being conducted in this way.

The issues

3. The first issue that the Tribunal had to decide was how and when the Claimant was dismissed. He said that he had been dismissed by an email dated 14 July 2020, taking effect on his non-attendance at a meeting on 20 July 2020. The Company said that he had been dismissed by a letter dated 8 October 2020, giving him notice that his employment would terminate on 4 November 2020. Section 111 of the Employment Rights Act 1996 (ERA) provides that if a dismissal is with notice the Tribunal can consider a complaint if it is presented after the notice is given but before the effective date of termination. The claim was presented on 6 September 2020, so if the Company's position on the manner of dismissal was correct the claim would have to be dismissed as having been presented prematurely.

4. The Tribunal then had to decide what the reason or, if more than one, what the principal reason for the Claimant's dismissal was, and whether the Company had shown that it fell within the potentially fair categories of dismissal in Section 98(1)(b) or (2) ERA.

5. If the Company could establish such a reason then the remaining issue for the Tribunal to decide was whether in the circumstances the Company acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the Claimant (Section 98(4) ERA).

6. If the Claimant's dismissal was unfair, then the Claimant wanted to be awarded compensation, not re-employment. By agreement with the parties, the Tribunal decided that it would make findings on certain matters relating to the calculation of compensation, in the hope of being able to avoid the need for a separate remedy Hearing.

7. In relation to the basic award of compensation, the Tribunal would decide whether the Claimant was guilty of any form of culpable or blameworthy conduct, such that it would be just and equitable to reduce that award to any extent (Section 122(2) ERA). In relation to the compensatory award, which was to compensate the Claimant for his loss sustained in consequence of the dismissal, the Tribunal would decide what the chances were that the Claimant would have been dismissed even if the Company had acted reasonably (Polkey v A E Dayton Services Ltd (1988) ICR 142). Further, if the Claimant was guilty of culpable or blameworthy conduct that caused or contributed to his dismissal, the Tribunal would consider whether and to what extent it would be just and equitable to reduce the award having regard to that finding (Section 123(6) ERA).

The facts

8. At the Hearing, the Tribunal heard oral evidence from the Claimant. It also heard short oral evidence from his representative, Mr Woolston, about his role in advising the Claimant in relation to his dispute with the Company.

9. The marriage of Mr Mathieson and the Claimant's mother broke down in 2004. There was an acrimonious divorce and Mr Mathieson and the Claimant's mother are not on good terms. Mr Woolston is the Claimant's mother's new partner. Mr Mathieson and Mr Woolston were friends for many years but by the time of the events relevant to this claim their friendship had ended.

10. For the Company, the Tribunal heard oral evidence from Mrs Tina Mathieson, formerly Tina Whelan, who is Mr Martin Mathieson's new wife and the director responsible for human resources management in the Company. On both parties' accounts, it was she who made the decision to dismiss the Claimant. The Tribunal also heard from: Mr Mathieson himself; Miss Susan Brown, the Company's Office Manager, who was present at a meeting between Mr Mathieson and the Claimant on 23 March 2020; and Ms Kelly Gray, the Company's Secretary and joint Office Manager, who investigated the complaints that the Company believed the Claimant had raised about the way in which he had been treated.

11. On the basis of that oral evidence and the various emails, texts and other documentary evidence to which the Tribunal was referred, it makes the following findings of fact relevant to the issues in the claim.

12. The Claimant started work for the Company on 8 October 2010 at the age of 21 after leaving university, initially as a junior on a part-time basis. The Company did not have a vacancy at the time, but Mr Mathieson decided to recruit the Claimant, at the request of the Claimant's mother, in order, he said, to give the Claimant some structure in his life. After receiving training, the Claimant progressed to the position of Liability Adjuster (Associate Director). His job involved investigating claims on behalf of insurers. Mr Mathieson hoped that the Claimant would take over the Company at some point in the future.

13. The Tribunal accepts that, as Mr Mathieson acknowledged, it is not easy for a father and son to work together. It is inevitable that the personal relationship between them will impinge upon or affect the work relationship in some way. It appears from the curriculum vitae in the Hearing file that this was the Claimant's first full-time job since leaving university. This was his one of his

first experiences of the world of work and his first experience of what is expected of an employee working in a professional role.

14. The Tribunal heard evidence on Mr Mathieson's approach to his management of the Company from Mr Mathieson himself, Miss Brown, Ms Gray and a statement from Mr Ray Phair, another adjuster who has worked for Mr Mathieson for many years that was considered in the grievance investigation by Ms Gray. The Tribunal draws two conclusions from this. One is that Mr Mathieson is an extremely focused individual, committed to making his business succeed, who works long hours to achieve that goal. The other is that Mr Mathieson has high standards that he expects those working with him to meet. The Tribunal accepts that many employees would find those expectations challenging and some might even resent them, but it appears that Mr Mathieson's approach has been perceived by most of his employees as fair, even if demanding, since several of his workforce have worked with him for many years.

15. For several years, the Claimant's employment went well. During 2019, however, the Claimant began to make comments to Mr Mathieson that caused Mr Mathieson concern. These included: "Mum and Beth [the Claimant's girlfriend] do not want me to be like you", "I don't want to take over the business", "On an hours worked basis, Beth earns more than me" and "I'm never going to work the hours you do". Mr Mathieson perceived these comments as the Claimant challenging his authority over him. Certainly, the Tribunal accepts that these comments indicated this was a young man seeking to assert his own identity and put some distance between himself and a father who was clearly a powerful person in his personal and professional life.

16. There were several occasions also on which the Claimant resisted or was slow to accept the professional guidance that Mr Mathieson was offering him. There were at least two instances of this in March 2020. On one occasion the Claimant queried and then refused to accept Mr Mathieson's advice that an employer might be liable for an accident that occurred before an employee began his work shift. On another occasion Mr Mathieson had to assist the Claimant extensively with an email that had initially contained a serious error and had to go through five drafts before it was improved to the point of being acceptable to be sent to the client.

17. By March 2020 there was increasing concerns in the country at large about COVID-19 and the risk of infection. On 18 March Mr Mathieson sent staff an email making clear that adjusters should not put themselves at risk and that face-to-face meetings were prohibited, but "insofar as locus's are concerned, we should still be able to attend". A "locus" is the scene of an accident that a loss adjuster may need to visit to gather relevant information.

The meeting on 20 March

18. On Friday 20 March, the Claimant spoke to Mr Mathieson in his office about whether adjusters should still be visiting the accident locus of road traffic accident claims. The parties' evidence on what was said during that meeting is markedly different.

19. The Claimant said that Mr Mathieson responded in a hostile way to his query, saying: "Well why wouldn't we do them? What a stupid question. No other adjuster has asked that, Callam. It's just laziness". When the Claimant said he was only asking for advice, Mr Mathieson responded that he was "ruining the adjusting profession" and that he would be "docking half a day's pay". When the Claimant said that that seemed unfair, Mr Mathieson responded: "Go ahead sue me if you like". Mr Mathieson then threatened to send him home for three months off work on "unpaid leave" to "think about his attitude". He demanded that the Claimant get out of his office, go upstairs and email him to confirm that he would be taking three months off work on unpaid leave. The Claimant returned to his office and continued working for the rest of the day.

20. Mr Mathieson's evidence was that the Claimant told him that he did not think that they should be carrying out locus visits. Mr Mathieson explained why such visits would not pose a health and safety risk but the Claimant maintained that he did not think they should be done. Mr Mathieson explained that the Company's clients were still required locus visits to be done and asked whether the Claimant had read his email that said that they should continue. Mr Mathieson repeated that his instruction was that locus visits should be done, but he would be monitoring the situation and Government recommendations closely.

21. The Tribunal accepts that it is more likely than not that Mr Mathieson showed some exasperation with the Claimant during their conversation. The Claimant's query indicated that he had not read Mr Mathieson's email. It is also inevitable that the Claimant's attitude of resisting Mr Mathieson's guidance would have had a cumulative effect on Mr Mathieson's patience with him. Given the Claimant's text message about the conversation, sent the following day, the Tribunal also accepts that Mr Mathieson's tone in addressing the Claimant was more disinhibited and not as respectful as it would have been had he been talking to an employee who was not his son and that the Claimant felt that Mr Mathieson was being dismissive of his concerns and was upset about that.

22. The Tribunal nevertheless accepts Mr Mathieson's evidence that he did not make the specific remarks that the Claimant alleges, for several reasons.

23. Mr Mathieson's office door was open during this conversation, as it always was. In his claim form, the Claimant said that Mr Mathieson "yelled" the words

"Go ahead and sue me." He did not say this in his evidence to the Tribunal. Nevertheless, if Mr Mathieson had indeed shown the degree of hostility that the Claimant alleges, it is likely that voices would have been raised and someone else would have heard something of the exchange. The Tribunal heard no evidence that anyone did.

24. The alleged comments themselves are not inherently credible. Why would Mr Mathieson say he was going to dock the Claimant's pay because he raised a query about safe working practices, even if he found the query inappropriate, when neither he nor the Claimant was saying that the Claimant was refusing to work? Why would he ask the Claimant to email him to confirm that he was taking three months' unpaid leave if the order that the Claimant do so allegedly came from him?

25. If Mr Mathieson had made the alleged comments, it would have been highly unlikely that the Claimant and Mr Mathieson would have had the seemingly relaxed interactions that they had later that day. It was Mr Mathieson's unchallenged evidence that the Claimant came into Mr Mathieson's office on several further occasions that day and showed no sign of upset or distress. He chatted with Mr Mathieson and told him that he and his girlfriend were going to his mother's house for a meal that evening. Mr Mathieson gave him two bulk packages of toilet paper, which were in short supply at that time, and the Claimant thanked him for them.

26. The Tribunal accepts Mr Mathieson's evidence that he was not aware until he read the Tribunal claim form what comments he was alleged to have made during the meeting. The texts he exchanged with the Claimant after the meeting are consistent with him believing at the time that the Claimant was taking objection to Mr Mathieson correcting his work. Given how striking the alleged comments are, the Tribunal considers that, if Mr Mathieson had made them, he could not but have been aware that he had done so, and would have understood that those were the comments to which the Claimant objected. As Mr Mathieson was maintaining to the Claimant that he did not understand what he had done to upset him, it is likely that the Claimant would have spelt out to him exactly what the offending remarks were at some point, if they had been made.

The week-end texts

27. In the early evening on Saturday 21 March, the Claimant texted Mr Mathieson saying he would not be playing golf with him as they had arranged "after what you said Friday. It was just abusive and made me feel terrible. x". Mr Mathieson interpreted this text as referring to the corrections that he had had to make to the Claimant's work over recent days. In his text in reply he said: "Sorry you feel that way. . . . It's hard working with family. The family work has to be separated. You can't be treated differently and I'm sorry I'm

spending to much time checking work which should be to a more thorough standard. If it's not it serves to put our support levels and jobs at risk. Think how I feel having to spend so much time correcting work. I've just bought new clubs, paid for membership so that you're not playing doesn't help x" This was a reference to the fact that Mr Mathieson had just bought a new set of golf clubs for the Claimant and paid for his membership of the golf club so that they could play golf together. Playing golf with the Claimant had become a highlight of Mr Mathieson's week. The Claimant texted: "Well maybe another time then x"

28. Mr Mathieson replied: "That is a defensive approach which is said. . . Son, if its difficult to work with me I understand but it's your move." The Tribunal interprets this as an indication from Mr Mathieson that if the Claimant was unhappy working with his father then it was the Claimant who needed to decide what to do about that. The text went on: "I am lucky enough to have very loyal staff. I had calls today at work of support. They know I put them first. X" This was a reference to calls that Mr Mathieson had had from the people he worked with to express their support for Mr Mathieson in dealing with the business challenges posed by COVID-19.

29. The following day, Sunday, Mr Mathieson texted the Claimant to suggest that the Claimant go around to see him at home so that they could go for a walk and chat. "Better there than at work x". The Claimant said he was out walking his dog and had had a drink so he could not drive, but added: "But I'm interested to know what makes you think it's ok to talk to people that way? X". Mr Mathieson's response was: "I spoke to you absolutely fine. You need to distinguish work from home. I'm sorry son, if you think your work has been to a satisfactory standard, I'm afraid you are mistaken. My worry is that you are making matters worse. I've tried. They say never to work with family. I remain confident that if you took on board guidance rather than challenging everything you would find it easier. I think we should call working together a day and end it. I've tried very hard to give you the benefit of my experience so that you can stand on your own. I feel it is being thrown in my face. You may not like all I say but I am responsible for a lot of people. It sad that you will not come around but let's talk first thing although from things you've said and the toxic tone of your texts, let's agree you find another job. I know you'll hate me at first but our relationship and love comes first. That is much more important than work and it will enable you to work in another environment and one where you may be better suited. X" Mr Mathieson was clearly suggesting that they should agree to a parting of the ways and that the Claimant should find a job elsewhere where he might be happier.

30. The Claimant replied: "You haven't answered the question. So you're saying that if the standard of work is not satisfactory, then that makes it ok to verbally abuse and threaten people? Shame on you. This isn't about standards of work. It's about the way you treat people sometimes." Mr Mathieson

responded: “You are making things up now. I spoke to you fine. I do not wish matters to escalate. I feel the abused. I’ll see you tomorrow at work but working together is sadly at an end. I don’t know what happened from leaving work, arranging golf, taking loo paper but it got nasty. I’ve never threatened you. Never. As to how I treat people I try to be honest and fair. Kelly has worked for me for 20 years, David R 25 years, Ray 11 years. I could go on. You will not heed anything I say but staff are very loyal to me. X”

31. This text clearly indicated that Mr Mathieson was upset and that his current thinking was that the Claimant’s employment was no longer sustainable. That meant that he was already contemplating dismissing the Claimant. Given the heated context of these text exchanges and the reference to meeting the Claimant at work tomorrow, the Tribunal does not consider that the words “working together is sadly at an end” are clear enough to show an intention immediately to terminate the Claimant’s employment. At the Hearing, the Claimant’s representative accepted that that was the case.

The meeting on 23 March

32. On Monday 23 March, the Claimant attended for work as usual. Mr Mathieson met with him. He asked Miss Brown, as Office Manager, to attend to take notes. Again, Mr Mathieson and the Claimant gave starkly different evidence about what was said during this meeting.

33. The Claimant’s evidence was that he remained calm throughout the meeting. He told his father he had no intention of leaving the Company and asked him why he was forcing him to leave. He told him that he felt Mr Mathieson had verbally abused, belittled and threatened him the previous Friday and that he had been threatened with being sent home or losing wages after simply asking for advice on locus visits. Mr Mathieson denied threatening him, said he had not spoken to him unfairly and that he had nothing to be sorry for. When the Claimant reminded him of what he had said on the Friday he denied everything and called the Claimant a liar. He lectured and questioned the Claimant for 30 to 45 minutes, demanding every detail of occasions when the Claimant said he had abused other staff and saying the Claimant should be dismissed for making false accusations. When his father asked him when he felt his unfair treatment of the Claimant had started, the Claimant “eventually snapped in frustration and said ‘since I was born’”. The Claimant told Mr Mathieson that he thought he was acting like a bully and that he should know how it feels as he had been bullied as a child. Mr Mathieson started to tell the story of how he was bullied at school and then broke down in tears. The Claimant said that Mr Mathieson “became extremely upset to the point of inconsolable sobbing” and told the Claimant to leave his office. Ms Brown came up to the Claimant’s office and said, “I’m so sorry Callam” and that he had to leave immediately as his father had dismissed him.

34. Mr Mathieson's evidence was that the Claimant's attitude during the meeting was aggressive and confrontational from the outset. When Mr Mathieson asked him what their text exchange over the weekend was all about, the Claimant made no reference to the discussion on 20 March but rather asserted that Mr Mathieson was a bully, no one dared speak up against him and, on behalf of everyone, he felt he had to do so. He did not like how the Company was run, it was not a nice place to work and no-one liked Mr Mathieson. Mr Mathieson asked him for examples of when he had bullied people but the Claimant mentioned only Tina Mathieson. Mr Mathieson accepted that he had spoken abruptly to her in the office on one occasion, when she sought to interrupt a meeting Mr Mathieson was having to discuss a personal matter.

35. The Claimant's remarks were very hurtful to Mr Mathieson and Mr Mathieson perceived them as being designed to be so. When Mr Mathieson asked him how long the Claimant thought he had been a bully, the Claimant paused, leant back in his chair slightly, put his finger to his mouth, paused again and said: "Let me see". He paused again and then said: "What year was I born?" Eventually, Mr Mathieson asked Miss Brown whether, having heard what the Claimant had said, she thought he had a future at the Company, and she replied something along the lines of "Sorry Callam, I don't". Mr Mathieson was heartbroken at the Claimant's comments and eventually broke down and, to use his own word, "bawled". In his evidence to the Tribunal, Mr Mathieson described his experience in the meeting as "horrible".

36. The Tribunal prefers Mr Mathieson's account of this meeting to that of the Claimant, for several reasons. First, it is consistent with and supported by the evidence given by Miss Brown, who was present throughout the meeting. Although she was there to make notes, she gave up making notes quite early in the meeting because she was so shocked at what the Claimant was saying. She typed up her notes only much later, in July, when it became apparent that the Claimant and the Company were in dispute. The Tribunal accepts that the content of those notes, which is detailed, is likely to have been significantly influenced by Mr Mathieson, who gave Miss Brown comments on her draft of them. She herself said in evidence to the Tribunal that her memory is not good, and the Tribunal considers it unlikely that she would remember that amount of detail about what had been said four months before she compiled the notes. The Tribunal does not, therefore, accept that Miss Brown's notes should be viewed as reliable evidence of what was said in the meeting.

37. The Tribunal does, however, accept the truth of the thrust of Miss Brown's evidence, which was clear and consistent, that she was shocked at how the Claimant behaved in the meeting and what he said. He said horrible things to and about his father. She had never heard anyone speak like that to anyone. In her words: "In my opinion, and I'm sorry to be so blunt, Callam was acting

like a spoiled little rich boy. He was simply not listening to anything that Martin was trying to say to him, thought he was right, was disrespectful and it was [as] if he was challenging his father's authority. I genuinely do not think that anyone could have remained employed by the company having said what Callam said and had it been anyone else, I would have thought most bosses would have terminated the meeting much, much sooner and the individual would have been instantly dismissed."

38. Further, Miss Brown gave clear and credible evidence to confirm the detail of Mr Mathieson's evidence on the way in which the Claimant had responded to Mr Mathieson's question about when he maintained the bullying had started. This response was given in a calculated way. It was not the response of a person who felt under attack during the meeting, as the Claimant maintained, but of one who was in control. The Tribunal notes in this context that the Claimant had felt able to say in his text to Mr Mathieson over the week-end "Shame on you".

39. The Claimant and Mr Mathieson agreed that at the end of the meeting Mr Mathieson broke down into violent sobbing. When asked by the Tribunal why he would do this if the Claimant had not in fact been saying upsetting things to him, the Claimant suggested that he might have been making it up. This is simply not credible, and the Claimant made no such suggestion in his witness statement. The Tribunal considers that Mr Mathieson's reaction was entirely consistent with his account of the meeting, that he had been the subject of sustained and disrespectful personal and professional criticism and intentionally hurtful comments by his son.

40. All Mr Mathieson's subsequent communications were consistent with his experience of the meeting being that the Claimant had behaved disrespectfully towards him and hurt him badly.

The furlough agreement

41. The Claimant went home after the meeting. He sent Mr Mathieson an email the next day headed "Yesterday's dismissal". The Tribunal does not accept that anything was said to the Claimant on 23 March that clearly indicated that the Company had terminated his employment, and the Claimant accepted that at the Hearing. The Tribunal accepts Miss Brown's evidence that after the meeting she told the Claimant that she did not think he could work at the Company anymore and that he should go home, but it also finds that she did not have the actual or ostensible authority to dismiss him.

42. In the email the Claimant said: "Don't think it doesn't hurt me to see you so visibly emotional and upset as you were yesterday". He said he was worried about being unemployed during the pandemic and wanted to know what his wage situation was. He asked about a reference for the future.

43. By this stage, Mrs Mathieson had taken external advice on how the Company should deal with the Claimant's behaviour at the meeting on 23 March. The Tribunal does not know what that advice was but it seems more likely than not that the Company would have been informed that it would be entitled to treat the Claimant's behaviour as gross misconduct, justifying summary dismissal. Mr Mathieson decided not to take the advice that the Company was given and as a result the Company's advisers were not advising on the management of the Claimant's situation over the next few weeks.

44. In reply to the Claimant's email, Mr Mathieson said: "I don't know how we ended up were we did, but I hope we can re-build." He put four possible options to the Claimant, which he set out as follows:

> "1. Instant dismissal with immediate effect, no notice is paid (I appreciate the implications and for various reasons, I do not want to do that);
>
> 2. Instant dismissal, but with discretionary agreement to pay 1 months salary from 23rd March plus owed holidays;
>
> 3. You remain employed, I issue you with a Furlough letter and you receive 80% of your salary up to a maximum of £2,500 per month for 3 months, after which you tender you notice. I could not give a monkeys uncle what anyone tells you, that is neither bullying you into anything or threatening you. It's exploring a possible solution that affords you some comfort;
>
> 4. You explain to me what was yesterday and all your comments about? It's hard working with family and distinguishing personal/business boundaries. You come in to the office and explain. If we can find common ground and you listen and respect that I'm trying to run a business and take on board what I say, then you come back as a trial for 3 months and we see how it goes. If, however, you are going to be in any way influenced by you mum, then it's a non-starter. I have no wish to argue with your mum, but going forward I'm going to stand my ground: she has taken advantage and bullied me for too long…..and she pampers you. I will still show you the letter of dismissal which is prepared for your information (only).
>
> If you can think of a sensible alternative, then let me know and I'll consider.
>
> Of course I'll give you a reference.

> I love you son. I wish you every happiness and to enable you to fulfil your aspirations and dreams. I'd very much like to be part of that."

45. The Claimant agreed to be furloughed. In evidence he said that this was under duress, but the Tribunal does not accept that. He would be aware that he was vulnerable to summary dismissal as a result of his behaviour on 23 March. This option provided him with a degree of income protection while he found another job.

46. In the event, the Claimant did not find another job and nor did he resign. He remained on furlough, receiving 80% of his normal pay. The relaxed tone of the email exchanges that the Tribunal saw indicated that he and Mr Mathieson's working relationship was on an even keel during this time. Mr Mathieson wrote to the Claimant on 12 May acknowledging that the Claimant would be leaving the Company at the end of furlough and suggesting that he use his time on furlough to further his vocational studies, encouraged him to explore his future career and employment opportunities and offered guidance and possible leads.

Claimant does not resign

47. Mr Mathieson's option 3 involved the Claimant going on furlough but resigning after three months. On 25 June Mrs Mathieson wrote to him and asked him what his position was. If he was to give 4 weeks' notice, as his contract required, the Company should have received his notice of resignation at the beginning of June. She said that the Company might be prepared to consider offering him further employment to the end of August, provided he gave his notice of resignation with effect from 31 August within the next 10 days. Failing that, his employment would be deemed as having come to an end on 30 June. She added: "Your employment needs to be brought amicably to a conclusion, although if you do have alternative thoughts that we can consider, then please let me know within the next seven working days".

48. In an email to Mr Mathieson on 29 June, the Claimant said that he interpreted this letter as Mr Mathieson having had Mrs Mathieson write to him to ask for his resignation. "You want rid of me without paying a penny leaving me with no income in the worst crisis in decades and a jobless future. I am in a constant state of worry/anxiety about how Beth and I will survive or whether we will keep our home". The Claimant did not acknowledge that the offer of being put on furlough, which he had accepted, had involved his agreement to resign. Mrs Mathieson's letter had been sent because he had not done so.

49. On the same day, the Claimant wrote to Mrs Mathieson and said: "I note you are likely to lose staff and presumably they will be made redundant in which case I believe I should also be considered. This would allow me to claim

unemployment benefit. I would appreciate a letter of reference as part of any agreement. Please provide a draft."

50. On 30 June, Mrs Mathieson replied that making the Claimant redundant was not an option, as he had agreed to be furloughed as an alternative to dismissal. He had chosen not to take up Option 4 of coming into the office to discuss matters. The Company would consider providing a letter of redundancy and a reference, but as part of a compromise agreement to settle the dispute between them.

51. In his reply dated 3 July, which Mr Woolston was directly involved in drafting, the Claimant described Mr Mathieson's breakdown on 23 March as a "tantrum". He said: "You threaten to withhold a termination letter and reference, deliberately jeopardising my future, unless I submit to your demands. I don't appreciate the continued bullying and I still cannot understand why you are seeking to get rid of me without paying a cent after 10 years loyal service. I am being discriminated against simply because I didn't want to play golf with dad." This was a reference to the Claimant's decision not to play golf with Mr Mathieson on 22 March. Again, the Claimant does not acknowledge that he had agreed to be furloughed on the basis that he would resign and he had not done so. His statement that Mr and Mrs Mathieson were "deliberately jeopardising" his future is inconsistent with the efforts that Mr Mathieson had been making to support him in finding another job.

Letter of 14 July

52. On 14 July, Mrs Mathieson wrote to the Claimant again, confirming the Company's position that the Claimant's behaviour on 23 March warranted his dismissal. She went on: "We have invited you on 2 occasions to attend the office to discuss. You are formally invited to attend the office at 10.30am on Monday 20th July: Martin and Kelly will be present. We have no objection if you are accompanied. Should you fail to attend, your employment will be deemed formally terminated (instant dismissal) effective from the 30th June and I will forward a letter to that effect."

53. The Tribunal is in no doubt that Mrs Mathieson wrote the letter in the hope of applying pressure to the Claimant to attend the meeting, in the hope that they could break the impasse they had reached through face-to-face discussion. The letter was unsuccessful because the Claimant did not wish to discuss matters further. He did not attend the meeting.

Subsequent events

54. Mr Woolston had been giving the Claimant advice about his situation since the Claimant first spoke to him about it after his meeting with Mr Mathieson on

23 March. He began to help the Claimant draft his correspondence with the Company with effect from the Claimant's email of 3 July. After the letter of 14 July, however, he began to be involved in direct email correspondence with the Company. This began with Mr Mathieson emailing him on 20 July asking for his help. Mr Mathieson said: "By writing to you, I hope reflects how desperate I am, but again, I could not give a monkey's how I feel, I'm trying to help resolve. Without discussing cause or blame, I'd be grateful if you could call to explore if you can mediate the employment situation."

55. Mr Woolston replied: "If it is in Callam's interest we can speak but I'm not a neutral party. I will provide all the help and resources Callam needs to bring this matter to an ET." Referring to the meeting on 20 March, he said: "That you would torch and burn your relationship over a loss of temper and a need to maintain your false version of events is bewildering. . . Your Friday outburst is something I can understand but not condone." Mr Woolston clearly accepted that the Claimant had been abused by Mr Mathieson during their meeting on 20 March and that the dispute between the Claimant and the Company was due to Mr Mathieson's refusal to admit to having behaved badly. He makes no reference to any inappropriate behaviour by the Claimant on 23 March. In his response, Mr Mathieson says: "I had hoped and still hope that you may see things objectively: I may not have followed the correct procedure and I did endeavour to compromise because he is my son, but be under no illusion, his conduct warranted instant dismissal." He also stated: "I still do not know what happened on the Friday, and in front of who?" He suggested that hostility on every front should end and that everyone should "get on and combine our help and resources for all those that we love, not fight unnecessarily".

56. Mr Woolston responded by saying: "That you don't remember what happened on the Friday is the root of the problem. Your goose was then cooked before the weekend ended." He ends with: "Review with someone independent, make a suitable financial offer and seek Cal's understanding. He needs to move on and you should be part of that."

57. Mr Mathieson's email in reply contains this passage: "Perhaps there needs to apologies on all sides, likely there have been misunderstandings or poor communication by everyone. As a father, right or wrong, if Callam got away with speaking to his employer or anyone as he did to me and as has been recorded by the Office Manager, then I'm sorry, he needs to be told that he was wrong. He cannot go about his life or career thinking he was right and risking doing it again."

58. At around this time, the Company resumed a relationship with its advisers, Although the Tribunal does not know what advice the Company received, its subsequent approach to the management of the Claimant was based on that advice.

59. On 22 July, Ms Gray wrote to the Claimant and invited him to raise a formal grievance about his concerns. She also offered informal mediation to resolve the dispute between himself and the Company. The Claimant's response was: "Isn't this simply a poor attempt to be seen as 'following procedure' having been unable to bully me relentlessly into resigning?" He did not consider there was any point in lodging a grievance or entering into mediation when Mr Mathieson would not accept that he had behaved abusively on 20 March. He suggested that if Ms Gray saw the texts that Mr Mathieson had sent him over the weekend after that meeting, which he described as "clear, unambiguous and chilling", they would reveal what he was capable of.

60. Although the Claimant did not lodge a formal grievance, the Company nevertheless decided to investigate his complaints about the way in which the Company had treated him. The Tribunal accepts that Ms Gray conducted this process in good faith and with diligence. She invited the Claimant to a grievance meeting, which he did not attend. She scheduled a further meeting and again he did not attend. She interviewed various individuals and read various documents and then wrote a detailed letter reporting the outcome, which was that she had concluded that his grievances were not substantiated. She added that the Company viewed him as still employed and that the Company was prepared to draw a line under the very serious events of 23 March and move constructively forward. The Company hoped to invite him to return to work, initially on a temporary basis whilst the business was kept under review (it not being clear at this stage how it would be affected by the impact of the virus). Mr Woolston's response was: "Are you not embarrassed to continue this farce? Those who sit on the ET will see through sophisticated shams let alone this clumsy nonsense. It does you nor MI any credit."

61. On 4 September Ms Gray wrote to the Claimant requiring him to return to work for 10 days from 9 September to help with the Company's increasing case load. On 7 September Mr Mathieson wrote to his ex-wife and the Claimant asking them whether they would be prepared to enter into some form of counselling to try to repair the broken relationship between himself and the Claimant. By 10 September the Claimant was writing to Mr Mathieson in these terms: "If you force the tribunal then how could I ever trust you again? If you 'win' what does it prove? There are no winners. You know and I know that you've been dishonest since that Friday. No one deserves to be treated this poorly by their employer/father. Please do the honourable thing so we can get past this and move on. The choice is yours. I have nothing more to say to you."

62. The Claimant did not attend work on 9 September. On 10 September Ms Gray wrote to him asking him to return to work on 14 September for 10 days. He did not return. On 16 September Ms Gray wrote for a third time and asked him to return on 18 September. When he did not do so, the Company began

the disciplinary process on the basis that he was on unauthorised absence from work. Mr Woolston wrote an email stating that the Claimant would not be meeting with the Company. When the Claimant did not attend the scheduled disciplinary hearing the Company fixed another date. He again did not attend and on 8 October Ms Gray wrote to him terminating his employment for unauthorised absence and failing to obey reasonable instructions to attend the disciplinary hearings. She stated that he was entitled to 4 weeks' notice of termination and that his employment would end on 4 November. She told him that he had the right to appeal against her decision. He did not do so.

63. The Company paid the Claimant up until the end of September. On 7 October it wrote to him asking him to repay the sum he had received in respect of the period from 9 September, the date on which the Company maintained his unauthorised absence had started. He did not do so.

Analysis and conclusions: liability

64. The Tribunal accepts that Mrs Mathieson's email of 14 July was a clear communication that the Company was terminating the Claimant's employment with immediate effect if he did not attend the meeting on 20 July. The letter purports to terminate his contract with retrospective effect if the Claimant did not attend, which was not possible since a dismissal cannot take effect until it is communicated to the employee. Nevertheless, when the Claimant did not attend the meeting on 20 July, his employment came to an end.

65. It is clear from the Company's subsequent conduct, in continuing to communicate with the Claimant as if he were still an employee and conducting a grievance and disciplinary process, that they wanted him to be in an employment relationship with the Company. That might have been because the Company wanted to avoid legal liability for the Claimant's dismissal, but the more likely explanation is that Mr Mathieson was still hoping that there was some way of repairing his working and personal relationship with his son. The Claimant had decided, however, that the employment relationship was over, as he was entitled to do in the light of the clear terms of the letter of 14 July, and he made clear to the Company that that was his position.

66. It is a striking feature of the facts of this case that the Claimant continued to accept payments from the Company whilst maintaining that he had already been unfairly dismissed. If an individual continues to accept pay, that would normally indicate he accepts that his employment continues. In the circumstances of this case, however, the Tribunal is prepared to accept the Claimant's position that he needed the money to meet his bills, he had no control over whether the Company continued to pay him and that his

acceptance of the payments was because of his financial situation, not because he accepted his employment was continuing.

67. The Tribunal finds that the reason Mrs Mathieson sent the letter of dismissal was that the Company wanted to exert pressure on the Claimant to come into the office to engage in dialogue with his father about what had happened between them and how they could make the relationship work. The Tribunal does not accept that that reason falls within any of the potentially fair categories of reasons for dismissal in Section 98 ERA. There is a residual category in Section 98(1)(b) of "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held". That category does not apply because the Tribunal does not accept that a desire to pressurise an employee into face-to-face dialogue provides a justification for dismissal. It is an employee's choice as to whether he wishes to meet with his employer, albeit that if he chooses not to do so he must live with the consequences.

68. It follows that the Claimant's dismissal was unfair.

Analysis and conclusions: compensation

69. The Tribunal has considered whether the Claimant was guilty of culpable and blameworthy conduct that makes it just and equitable to reduce his basic award of compensation.

70. As explained above, the Tribunal accepts that during the meeting with the Claimant on 20 March Mr Mathieson showed exasperation and lack of respect. The Tribunal also accepts that the Claimant reasonably perceived Mr Mathieson's treatment of him in that meeting to be unsympathetic and dismissive and that the Claimant was upset by what he considered to be a lack of respect being shown to him by his father. It is also the case that in his texts over the weekend Mr Mathieson moved immediately to a position, which he would not have reached so quickly with an employee who was not his son, that the Claimant's employment was not sustainable. This amounted to an inappropriate and insensitive display of his power over his son's continued employment that doubtless added to the Claimant's anger and upset.

71. The fact remains, however, that the Claimant conducted himself badly at the meeting on 23 March. He was profoundly disrespectful towards his manager, in a way that would have justified the summary dismissal of any employee. It is striking that at no point in his dealings with the Company or in his evidence to the Tribunal did the Claimant accept that he had behaved inappropriately in any way on that day. Mr Mathieson conceded in his communications with the Claimant and Mr Woolston that there might have been misunderstandings and things for which he should apologise. The Claimant repeatedly refused to acknowledge any inappropriate behaviour on his own part. At no point did the

Claimant indicate a willingness to apologise for any part of what he had said at the meeting or how he had said it, even though it had resulted in Mr Mathieson breaking down in tears.

72. The other significant feature of the Claimant's conduct is his failure to acknowledge the full terms of what Mr Mathieson had offered him at an early stage, in his email of 23 March. One option, which could have avoided the path that led to his dismissal, was to come into the office to discuss with his father what had happened between them at the meeting that day. The Claimant did not take that up option, even though, whoever was at fault, it was clearly an essential prerequisite to his employment continuing that he and his father should talk and sort things out between them. Further, the option the Claimant chose, which was to be placed on furlough for three months, was offered on the basis that he would resign at the end of that period. In his subsequent communication with the Company, the Claimant failed to acknowledge the existence of that condition and painted the Company as acting unreasonably and heartlessly when it tried to establish why he had not yet resigned. The Claimant failed to take responsibility for the consequences of his own decision, in a way which made his dispute with the Company intractable.

73. More generally, Mr Mathieson repeatedly asked the Claimant and Mr Woolston to meet with him to discuss things and see whether they could resolve their differences, even though he had been very hurt by the Claimant's behaviour on 23 March and the Claimant had not acknowledged that he had behaved badly. In contrast, at no stage was the Claimant willing to meet with Mr Mathieson until Mr Mathieson had acknowledged and apologised for comments he made on 20 March that the Claimant never detailed.

74. Looking at these matters in the round, the Tribunal is satisfied that the Claimant was guilty of significant culpable and blameworthy conduct. The Tribunal also considers it just, however, to take into account that it was Mr Mathieson's inappropriate tone with the Claimant in the meeting on 20 March that triggered the events that followed. The Tribunal concludes that it would be just and equitable to reduce the Claimant's basic award by 80% on account of his conduct.

75. The basic award is calculated according to a formula set out in Section 119 ERA and is based on the Claimant's age, length of service and week's pay, subject to a statutory cap of £538. The Claimant was aged 30 at the effective date of termination of his employment on 20 July 2020. At that date he had completed 9 complete years' service with the Company. Applying the statutory formula to the facts of the Claimant's case, his basic award would be £538 x 8.5 = £4,573. Reducing that by 80% gives a figure of £914.60, which is the award that the Tribunal makes.

76. Turning to assessment of the compensatory award, the Tribunal is satisfied that the Claimant's employment would have come to an end on or before the date that it did even if the Company had acted reasonably. From the way in which the Claimant conducted himself before and after his dismissal, it is apparent that he was not prepared to acknowledge, let alone apologise for, his behaviour on 23 March. He had an entrenched position from which he showed no signs of moving. The relationship between himself and his employer had broken down, partly because of Mr Mathieson's conduct but in major part also because of his own, and he was unwilling to engage in attempting to repair it.

77. It was therefore inevitable that the Claimant's employment would have been terminated by the Company because of that breakdown. That would certainly have amounted to "some other substantial reason" justifying his dismissal. By the time it received the Claimant's email of 3 July, the Company had clear evidence that the relationship could not be saved. The Claimant then failed to attend the meeting on 20 July. By that point at the latest, the Company could reasonably have decided to dismiss the Claimant on the basis that the employment relationship had irretrievably broken down. Having been employed for 9 complete years, the Claimant would have been entitled to the statutory minimum of 9 weeks' notice of dismissal (Section 86 ERA). From the Claimant's schedule of loss, however, it appears that in relation to the period from 20 July the Company in fact paid the Claimant more than the notice pay to which he would have been entitled.

78. The ACAS Code of Practice on disciplinary matters is not relevant in the Claimant's case because the reason for his dismissal was not misconduct. No increase under Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 is therefore appropriate.

79. In all the circumstances, the Tribunal does not consider it just and equitable to make a compensatory award.

80. In summary, the Tribunal finds that the Claimant's dismissal was unfair and awards the Claimant a basic award of £914.60.

81. As the Tribunal's findings on the agreed issues for determination have enabled it to reach a conclusion on compensation, the Hearing provisionally listed on 14 April 2021 to decide remedy can be cancelled.

Employment Judge Cox
Date: 10 February 2021