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Judgment: approved by the Court for handing down | *Delivered:* **10/3/05**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

MICHAEL BEATTIE

PLAINTIFF;

-AND -

ULSTER TELEVISION PLC

DEFENDANT.

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HIGGINS J

[1] Michael Beattie (hereafter referred to as the plaintiff) was born on 6 October 1952. He left Methodist College Belfast in 1970. After training as a reporter, he enjoyed several jobs with different media organisations in Northern Ireland. In 1976 he joined Ulster Television Plc (hereafter referred to as the defendant) as a reporter and presenter of television programmes in news and current affairs. In 1979 he left the defendant and worked for one year with the BBC as a senior reporter. In 1980 he returned to the defendant as Deputy News Editor. He left in 1985 and worked for two years with an Independent Film Producer. In 1987 he returned to employment with the defendant, this time as an Assistant Programme Controller and remained with them until 2001, when the events, with which this action is concerned, occurred. On appointment in 1987 he was responsible to the Controller of Programmes, then B Waddell, who was his line manager. Over the years the person to whom he was responsible, who was also his line manager, changed. In 2001 it was Alan Bremner, who was then Programme Controller. As an Assistant Programme Controller the plaintiff was part of the management team and served on most of the managerial committees. He worked almost exclusively in news and current affairs. The title of those with management positions changed over the years and so did the plaintiff's. By 1992 his salary

had increased to £41,000. From time to time he was commended for his work and was never the subject of written or oral criticism. Other managers retired or moved on and new managers were engaged. One of these was John McCann who was appointed Financial Controller and later became General Manager, which was a newly created position.

[2] The plaintiff recounted how shortly after his appointment Mr McCann asked to see him. He told the plaintiff that he was seen as someone not committed to the company and some reference was made to his attitude at managerial meetings and to his facial beard. Nothing more came of that at that time.

[3] In 1991 Robert (Rob) Morrison joined the company as editor of a current affairs programme called 'Counterpoint'. At that time the plaintiff had overall control of current affairs. He had good relationship with Mr Morrison who was previously with RTE. Indeed the plaintiff had suggested to Mr Morrison that he apply for the post with UTV.

[4] As Assistant Programme Controller the plaintiff was in charge of a significant number of staff, who included programme producers, newsroom reporters, television presenters and editors. In addition he was responsible for a considerable number of hours television output per week. In 1993 a major reorganisation took place within the defendant company. The plaintiff was called to a meeting with Mr McCann and Mr John Hutchinson, then personnel manager. The plaintiff recounted that he was told he was "not the man for the job" and that he carried "too much baggage". He asked for an explanation but no detail was provided, but his managerial abilities were not questioned. Later he was told he was too friendly with his staff. His job was re-designated as Head of Factual Programmes and his duties were changed to responsibility for the editorial content and performance of the weekly current affairs programme "Counterpoint", "Police 6" and factual documentaries. This took effect from 28 July 1993. As a result he lost the majority of his staff and his previous hours of output. "Counterpoint" had a small weekly output. At the meeting he was told that his salary would be "red-circled", that is not increased until the salary of everyone else on his scale was increased, as the salary he was then paid was above what a Head of Factual Programmes would be paid. The plaintiff remained within the management of the company but he considered this a sideways move within management and a demotion. He regarded his status within the defendant company to have been diminished. He considered leaving but at 41 years of age his options within television, which was his life long passion, were limited. As he put it he was doing a job he liked and for which he was well paid and decided on balance that it was better to stay. Other personnel were affected by the changed introduced in July 1993. Mr Morrison became editor of "UTV Live " (a daily news programme) with responsibility for all bulletins in addition to editorial content and performance of "UTV Live at 6 ".

[5] Between 1993 and 1996 the plaintiff worked as Head of Factual Programmes with no increase in salary. He was unaware of anyone else in a similar position. His main duty was overall responsibility for "Counterpoint "which was presented by Michael Nesbitt. This programme involved broadcasts on topical issues or in response to current affairs and events. It was a high pressure position for which he received much praise and commendation but significantly no complaint or criticism. During the period 1993 – 1996 his line manager was Mr McCann and Alan Bremner was in overall control.

[6] In 1996 the plaintiff was called to a meeting with Mr McCann and Mr Hutchinson in Mr McCann's office. Mr McCann was by then the General Manager, later to become the Group Chief Executive. At this meeting the plaintiff was told that there was no longer a place for him in the management of the company. The plaintiff asked why and recounted that he was told that "going into it in detail would not be good for him or would be damaging for him "and that there was "no point in dismantling it brick by brick as the decision had been made". The plaintiff said they discussed the future. He was told that if he chose to leave he would receive a year's salary. If he chose to stay he could still produce television programmes, but his role in production was not specified. The plaintiff was very upset by this and was almost reduced to tears. He said he felt completely devastated and lost a lot of confidence. However in view of his age he decided to remain, as he could continue to produce programmes. His title was changed to Senior Producer and his salary was reduced. Various perks that he received as part of the management were withdrawn, though he was allowed to retain his car until renewal, when the new vehicle would be downgraded. Over time he lost his office and the secretary he shared with a colleague. At the same time Mr Morrison became Head of News and Current Affairs and the plaintiff's line manager. Mr Morrison thus became Editor and was responsible for all News Programmes and "Counterpoint" was absorbed into the new News and Current Affairs area of responsibility. This the plaintiff regarded as, and was in fact, a reversal of their previous roles. With some foresight the plaintiff spoke to Mr Morrison and told him that he bore no ill will and that he would "work to him". Mr Morrison said he accepted that and said he would "give the plaintiff his place". The plaintiff and Mr Morrison attended meetings where the nature and content of programmes were discussed. Mr Morrison had a separate office, whereas the plaintiff shared a general office with the small team assigned to "Counterpoint". As time passed the plaintiff discovered that the new arrangements were not working. He found Mr Morrison did not "give him his place", avoided talking to him and instead spoke to more junior personnel. He did not consult the plaintiff at the outset about the content of future programmes. The plaintiff said he was often brought in late to "tidy up" productions or was assigned to something as the last resort.

[7] The plaintiff spoke to Mr Bremner and told him he was having problems with Mr Morrison. He thought this was the Spring of 1997. Mr Bremner advised that he confront Mr Morrison and observed that "his bark was worse than his bite". The plaintiff spoke to Mr Morrison and complained that Mr Morrison was by-passing him, speaking to juniors before him and not consulting him. Mr Morrison's response was to say that if he was doing this the plaintiff should tell to "go and f… himself". The plaintiff said that was not the answer whereupon Mr Morrison declared that he may have done what the plaintiff said inadvertently but not intentionally. The plaintiff accepted that. Thereafter for a short time there was an improvement. After a short time, weeks or months, the same sort of thing started happening again and the plaintiff's relationship with Mr Morrison deteriorated. Mr Morrison made it clear that he was going to make all the decisions and the plaintiff was to be treated just like everyone else and that he was to produce the programmes that Mr Morrison told him to. Thereafter Mr Morrison ignored the plaintiff and only spoke to him when it was absolutely necessary. The plaintiff felt demeaned and undermined, and also that this situation and his position were unsatisfactory. He spoke to Mr Morrison again; he thought this occurred in the Spring of 1998. He pointed out how he felt. Mr Morrison said there was nothing intentional about it. The plaintiff did not accept this, but left the meeting without saying so.

[8] An issue arose about a programme entitled "Punishment Attacks in Northern Ireland" which was made by the plaintiff, Brenda O'Neill and Trevor Birnie. This programme was nominated for a television award to be presented at a ceremony in London. Invitations were received. The plaintiff considered that he had produced the programme and that he should go to the award ceremony along with the others involved. Mr Morrison thought the plaintiff's contribution did not merit the description of producer. Mr Bremner, to whom the matter was referred, agreed with Mr Morrison and so Mr Morrison and Mr Birnie went to London, accompanied by Brenda O'Neill. Issues arose relating to other programmes, for example, the Omagh Wedding and the Good Friday Agreement as well as a working trip to Boston, USA.

[9] In 1999 a further reorganisation took place within the company. All existing contracts of employment were terminated by mutual agreement and new contracts entered into. In addition the plaintiff, like other members of staff, agreed to refrain from instituting proceedings before Industrial or Fair Employment Tribunals. The plaintiff signed a new contract on 1 July 1999. This contract described his job title as producer. This contrasted with a Salary Review in 1998 signed by Mr Morrison, in which his job title was described as Senior Producer. The plaintiff asserted that no-one discussed a change of job description with him. The new contract granted the plaintiff 30 days leave entitlement per year and included the company's grievance and disciplinary procedures. The Disciplinary Procedure Rules provided, inter alia -

″2. Informal Action

2.1 When an offence of a relatively minor nature is identified, the normal practice will be for a Supervisor or Manager to draw the member of Staff's attention to the failure to meet required standards by means of a private 'off the record' conversation. If there is a repetition, the member of Staff will usually be advised that any further occurrence will lead to formal disciplinary action.

3. Formal Action

3.1 When an offence is repeated or a more serious offence is identified, the Line Manager of the member of Staff involved will be responsible for initiating disciplinary action by investigation and interview.

3.2 The Manager involved will make the member of Staff aware that action is being instigated within this formal disciplinary procedure and will notify the Human Resources Department accordingly.

4. Right to Representation

4.1 A member of Staff has the right to be accompanied and/or represented at any stage of the formal procedure. Such representation will be restricted to the involvement of a work colleague or a Staff member who is a trade union official.

4.2 As a general principle, the appropriate steward will be informed of any disciplinary matter relating to a member of a trade union.

5. Investigation

5.1 Prior to any disciplinary interview, management will seek to assemble all of the factual material relevant to the case using such reasonable means as may be deemed necessary.

5.2 Depending on the seriousness of the offence and the timing of the disciplinary interview, a decision may be taken to apply suspension with pay during the period of the investigation.

5.3 A Staff member required to attend for disciplinary interview will be given sufficient notice to prepare a case. The employee will be informed in writing of the allegations and will be furnished with any notes and/or statements prior to the disciplinary interview.

6. Disciplinary Interview

6.1 The disciplinary interview will be conducted in the presence of the Human Resources Manager by the appropriate Manager, who will be required to maintain a report of proceedings. If the Manager has a personal involvement in the case, a Manager from another department will conduct the interview.

6.2 A disciplinary interview is not a trial and there are no formal rules. The members of Staff has the right to be given sufficient detail of the unsatisfactory conduct or performance to enable a full understanding of the nature of the complaint.

6.3 Should an adjournment be sought at any stage during the interview, this will not be unreasonably refused by either party.

6.4 At the conclusion of the disciplinary interview stage, it will be a management responsibility to prepare a summary report. A copy will be given to the member of Staff who will have an opportunity to comment on the findings.

6.5 Should the disciplinary interview stage confirm unacceptable conduct or performance management will identify the most appropriate remedial action and inform the member of Staff accordingly.

7. Remedial Action

7.1 The following may be applied:-

i. **Verbal Warning** Generally used for the first instance of minor misconduct. This will be registered in the Staff Member's personnel file and will be available for inspection. It will be deleted from staff member's personnel file after 1 year of satisfactory conduct.

ii. **First Written Warning** This will be issued in cases which are considered too serious to be dealt with by a verbal warning or where there is a repeat of misconduct for which a verbal warning has been issued. The circumstances of the warning will be confirmed in a warning letter to the employee by Management. It will be recorded on the employee's personnel file for a period of no less than 1 year, but may then be removed subject to satisfactory conduct or performance.

iii. **Final Written Warning** This is the most serious formal penalty, short of dismissal. It is generally used where there is a repeat of misconduct for which a warning or warnings have been previously issued, but may also be appropriate for a first instance in the case letter to the employee form Management. It will be recorded on the personnel file of the employee for period of 2 years, but can be removed subject to improved performance or conduct.

iv. **Dismissal** Such action will be justified following repeated misconduct for which a final written warning has been issued."

[10] By mid 2000 the plaintiff's relationship with Mr Morrison was distant and strained. He decided to do something about it and on 7 June 2000 he spoke to Mairead Regan the Head of Human Resources, formerly the Personnel Department. He asked for a meeting as soon as possible with her and Mr Bremner, the Controller of Programmes, about Mr Morrison's treatment of him. She said Mr Bremner was in London and that she would try to set up a meeting the following day. She asked if he would like Mr Morrison to be in attendance to which he replied no, but that he was happy to attend any further meetings afterwards, with Mr Morrison in attendance. The plaintiff said he wished to raise with these two senior personnel Mr Morrison's treatment of him over a long period of time. To that end he prepared a two page document which he intended to read to them.

[11] Around 10am on the following day 8 June 2000, the plaintiff was passing through the newsroom when Mr Morrison spoke to him and said "You know about the meeting at 12 o'clock". The plaintiff replied "no, what meeting". Mr Morrison said "the meeting with Mr Bremner and Miss Regan". The plaintiff described himself as quite shocked as he thought Mr Morrison had been invited to the meeting he had arranged with Miss Regan which was to be between himself, Miss Regan and Mr Bremner. He phoned Miss Regan but she was unavailable. He inquired from her secretary if the meeting that Mr Morrison had mentioned to him was a different meeting than the one arranged with Mr Bremner and Miss Regan. The secretary rang back to say that this was a different meeting and that it was about operational matters. Miss Regan's secretary did not give evidence.

[12] The Plaintiff went to Miss Regan's office at 12 o'clock. Present were Mr Bremner, Miss Regan and Mr Morrison. According to the plaintiff Mr Bremner opened the meeting by stating "this is serious, formal and will be recorded on your personnel file". Miss Regan took a note of the meeting. The plaintiff accepted the contents of this note. Mr Bremner said that two issues needed to be discussed – one related to outstanding money that was owed to the company and the other related to the plaintiff's claim for outstanding leave. This was clearly not the meeting the plaintiff envisaged. He stated in evidence that this "came out of the blue", he was not anticipating it and that he was totally shocked by it all. This was not in accordance with the company's disciplinary procedures as set out in his contract. He was not asked beforehand to provide a written explanation relating to the money allegedly owed to the company, nor was he asked if he wished to have a friend present. He claimed this meeting was not arranged formally. I shall return to this meeting and the contents of Miss Regan's notes later. It is necessary to provide the background to the two issues raised.

[13] Towards the end of 1999 the plaintiff was approached by the RUC. He was asked if he would like to make a programme about a proposed visit by

the Chief Constable to see RUC officers who had been seconded to Kosova. The plaintiff had to refer the matter to Mr Morrison for clearance to proceed. There was delay in obtaining clearance as Mr Morrison had to refer the invitation to higher authority within the company. The RUC were anxious for an answer otherwise they would approach the BBC. The original plan was for four personnel from UTV to fly via a commercial airline to London and then on to Kosova. The plaintiff purchased the necessary flights on his personal credit card at the request of Mr Morrison as approval of the trip had yet to be given. At the last minute Mr Morrison indicated they could proceed. Without warning, all commercial flights into Kosova were cancelled due to disturbances there. The Chief Constable then arranged a plane from the Queen's Flight to take them direct. The company was informed and the visit proceeded. As the plaintiff had purchased four tickets he made a claim for reimbursement by the defendant which was paid to him. He received vouchers for the Belfast/London/Belfast tickets and his credit card account was reimbursed for the London/Kosova/London tickets. This occurred at the end of January 2000. As the party flew eventually courtesy of the Chief Constable, the commercial airline tickets were cancelled and the company was then due the amount of the reimbursement, about £2400.

[14] Production of television news and current affairs programmes requires staff to work late and at week-ends and on other days when they would normally not be required to work. Towards the end of a calendar year each member of staff would prepare a list of such days known as "days owed", for which they would be compensated financially. There appears to have been no set procedures for the agreement of "days owed" or the operation of this scheme and payment thereof. The plaintiff said in evidence that it proceeded operated largely on trust and this was not seriously disputed. A member of staff would submit his "days owed" to his line manager. The Accounts Office would pay the staff member when the days owed were approved by the staff member's line manager. There was no set date for its completion.

[15] In November 1999 the plaintiff sent to Mr Morrison a memo setting out his days owed. This amounted to 26 days which the plaintiff estimated as worth over £2500. These were days he had worked at the request of Mr Morrison. Usually the amount due for "days owed" would be paid within weeks. This did not happen on this occasion. The plaintiff asked Mr Morrison several times what the position was. Mr Morrison's attitude was that "we needed to discuss it". At no time did Mr Morrison say that the plaintiff was not entitled to the money or that the claim was excessive.

[16] The Accounts Office supervisor was Jack Crawford and Linda McMaster was one of his staff. The plaintiff's evidence was that some time between November 1999 and June 2000 Miss McMaster reminded him about the money outstanding to the company. On a date believed to be 15 May 2000 the plaintiff spoke to Mr Crawford at the latter's request. They discussed the

money that was owing to the company and the plaintiff told him about the money due to him for "days owed" which Mr Morrison had told him would be paid soon. The plaintiff suggested to Mr Crawford that the two be balanced and the excess paid to the plaintiff, to which Mr Crawford replied – "fine as long as I know what you are doing". After that meeting the plaintiff understood there was no difficulty about this matter and that he could await the balance. At no time did he consider he was doing anything wrong nor did he consider he was in any way advantaged or the company disadvantaged by this arrangement.

[17] According to Miss Regan's note the meeting on 8 June 200 proceeded as follows –

> "AB opened the meeting saying it was serious and formal. Two issues needed to be discussed with Michael. One was with regard to outstanding money that was owed to the Company; the second was with regard to his claim for outstanding leave.
>
> MB said ' I've already talked this through with Jack. Initially I was going to Kosovo and paid for the flight on my credit card. The commercial airport was closed and I got vouchers back for the Belfast/London route which I returned to Linda. I was subsequently refunded for the rest but I did not pay immediately because I simply was not on top of my accounts in December and January. Linda did remind me but I forgot. I explained to her that I was being paid money for holidays owed and that we could balance off the two. I explained this to Jack.
>
> AB said 'But the outstanding amount was in excess of 2000'.
>
> MB said 'I'm well aware I owe the Company £2000, but no one had come back to me with regard to my holidays. When I got the money for the holidays I was going to repay the Company. I assumed I could pay this off when I got the holiday money'.
>
> AB said 'But no one had told you that you could hold back this money in lieu of money for holidays'.
>
> MB said 'I wasn't seeking approval from anyone. I assumed this was something I could do. Jack said something like it would be OK'.

AB asked 'Did you not think it was unusual to withhold money?'.

MB replied 'I had talked to Rob about 6 times since November and I knew there were discussions with regard to leave. This has totally shocked me. At no stage had anyone raised it. Linda once, Jack once'.

AB said 'But you have translated this into some sort of advance of what you think you might be paid by the Company for holidays owed. You have made a decision to unilaterally withhold money'.

MB said 'Putting it that way it does seem inappropriate. I am accepting what you are saying. But if anyone had said to pay it I would have paid it'.

MR said ' But someone did say to pay it. Both Linda and Jack had spoken to you'.

MB said 'Jack said it shouldn't be a problem. You sound like I was trying to embezzle the Company'.

AB said 'There is no question of embezzlement, nut you have off your own bat made a decision which advances you financially'.

MB said 'But the Company is sitting on £2000 from November last year'.

AB said 'As yet there is no agreement with regard to what money is owed'.

MB said 'I wasn't thinking of it in those terms but now looking at it this way I do accept, but there was nothing underhand or out of order. Expenses in this Company can roll on for months. I accept I should have paid it, there's no need to go on about it'.

AB said 'But this is a very serious matter. It is either naivety or very bad judgement on your part. The Company has been disadvantaged and you have been advantaged financially'.

MB said 'I can't deny that. I've been waiting since last November for my leave to be worked out'.

MR said 'But leave or days off in lieu have nothing to do with reimbursing the Company with money that is owed'.

MB said, 'In my mind I didn't perceive it as a problem. I'm absolutely amazed. Rob led me to believe that I was being paid for the holidays owed, that it was going to be resolved financially'.

AB asked 'How could you, in January, decide that you were going to hold on to money for six months'?

MB said 'It was either naivety or foolishness on my part. I was just balancing the two. If at any stage someone had asked me for the money I would have reimbursed it no problem. There was never any attempt to do anything malicious'.

AB said 'I don't understand why anyone would need to ask you for the money'.

MB replied 'I'm admitting that I was foolish or naïve but it was never malicious. In fact I always avoid doing cash advances. I knew I had to pay the Company sometime but they owed me so I was going to balance it'.

AB said 'This was a decision you took to benefit yourself'.

MB said 'But there are many ways of settling outstanding leave – not just financially'.

MB replied 'I presumed it was going to be financial. It never entered my head that this would be a problem'.

AB said 'This is a serious matter which will warrant a note on your file'.

MB said 'Clearly it is. What do you want me to do?' [*At this point he offered to write a cheque for £2000].* He said 'I'm absolutely aghast at this'.

AB replied 'Well the company is amazed and absolutely aghast for whatever reason this has happened. We are not judging your motivation'.

MB said 'I sent RM a memo on the 12 November 1999 outlining the fact that I was owed 26 days'.

RM said 'I didn't think about leave until the end of the year'. RM also said there had been a lot of negotiation which had unfortunately dragged on. Almost all of the staff issues regarding leave if not all have been resolved. He said that a claim for 26 days is excessive. RM also said he didn't know about the money owed to the Company. He was concerned about the 26 days which he though was excessive and was particularly concerned that he did not want to get into the same position next year. He said that Michael's claim for excess days owed was the only claim from within the Insight team'.

MB said 'There are others with days, but for whatever reasons they are not claiming'.

RM said that since the programme had moved to the Monday slot people were able to take the Tuesday, Wednesday, Thursday and Friday off as four days in lieu. He was happy to accept that on occasions there were some days off owed. He said that the Insight team got a lot of extra leave for New Year, Christmas and Easter and that he didn't ask them for leave sheets. Given Michael's holidays, a lot of days off in lieu and Christmas/Easter, Rob thought Michael had taken a lot of leave last year.

MB said 'The 8 June is very late to be coming back. My request for leave was probably first in and yet the others are resolved.'.

RM said 'The others have only been resolved this week'.

MB said 'I can show you my diary for last year, it does not seem an excessive claim'.

RM said 'To claim 5 extra weeks is extremely excessive'.

MB said 'It is a fact'.

RM said 'It is your interpretation of what you worked'.

MB said 'I can show you but you probably won't believe me'.

RM said 'I know the work you did last year, but from when the programme moved to the Monday night slot most weeks you were able to take the Tuesday, Wednesday and Thursday in lieu'.

MB said 'That's not correct, I may have taken the Tuesday and half day Wednesday, very rarely was I able to take 3 full days'.

RM said 'You were invited to take them off'.

MB said 'But if you had something to shoot you had to be in'.

RM said 'That didn't happen that often'.

MB said 'The programme is still on Monday nights and so far this year I've not one day to claim. I have taken more leave this year'.

RM said 'Then you are saying that within 6 months you are owed an extra 5 weeks holiday. This seems excessive'.

MB said 'Well the work I was doing was excessive'.

AB said 'The leave issue is a perennial problem, because of the degree of trust we place in staff – no one clock watches'.

MB said 'I agree with this and I benefit from the system'.

AB said 'Well it is good news that this year the problem has not replicated itself but we need to come

to some settlement or agreement with regard to what is owed'.

MB said, 'What do you mean'.

AB said 'We have paid others for leave owed, we are not comfortable paying 26 days, you need to meet us somewhere in the middle'.

MB said 'The only reason that it is excessive is because the work I have done is excessive'.

RM said 'I realise that we ask a lot of people to work weekends, but if staff work at weekends they are able to take the Tuesday, Wednesday, Thursday and most of the time you were able to do this. I don't ask for leave sheets for Christmas, Easter, Bank Holidays. There was extra time off. I am prepared to be totally flexible'.

MB said 'There is no point in debating any more. I enjoy the flexibility and I benefit from it'.

RM proposed 18 days.

MB said 'I think its appalling but I will accept it'.

AB said '26 days is excessive'. He suggested that Michael write a cheque to Jack Crawford for the money that was owed. He then said this was an investigatory meeting, and that the company now needed to decide whether we were undertaking the formal disciplinary procedure.

MB said 'If only someone had asked me'.

MR said 'But both Linda and Jack spoke to you about the money owed'.

AB said 'We don't expect someone of your seniority to act in this way, in fact we don't expect any staff to act this way."

[18] The plaintiff commented that when Mr Bremner stated that there was no agreement with regard to the money owed to the plaintiff, he could only have learnt this from Mr Morrison, as Mr Bremner would not be involved in

settling the plaintiff's "days owed". It was also wrong of Mr Morrison to say that this was the first time he was aware of money owed to the company.

[19] The plaintiff was very unhappy with this meeting. It was the first occasion that he was told that his claim for "days owed" was excessive. No one had informed him beforehand that this was an investigatory meeting and it was only at the end of the meeting that he was informed it involved a disciplinary process. In addition he was not offered the opportunity to have a friend present.

[20] Some time after this meeting he spoke to the presenter of "Counterpoint/Insight" Michael Nesbitt. He found him looking shocked and distressed.

[21] Later that day he spoke to Miss Regan about the meeting he had requested with herself and Mr Bremner. She said she thought under the circumstances he would wish to postpone it. However it proceeded at 6pm on the same date. The plaintiff read a document he had prepared and expanded on it from time to time. This document stated –

> "I believe and hope you accept I work hard, to the best of my ability give the company good value. Always enjoyed working for UTV and have enjoyed immensely a lot of what I've done over the past few years.
>
> I hope too you know I don't hold resentment and take the vicissitudes of life philosophically. 'Straight wicket'. So I hope you know that anything I say is not out of malice or begrudgery.
>
> Look fwd to new editor and wking with him. But aware tht in the course of the past few days in ints with Brenda and Trevor – because we talk amongst ourselves a lot – there has been criticism of Insight and recent performance etc.
>
> That's the first time I've heard that mentioned at all, though I have felt Rob has been dissatisfied with it from what things the others in the team hv told me, but Rob himself has said nothing to me.
>
> I feel that criticism particularly keenly being the most experienced and in real terms – if not in the way the programme's managed – the most senior. And I just feel there are a number of points I need to make, to

get off my chest, because I've been sick to my stomach the way things have been going and I can only presume that you and others are hearing one side of a story and basing any perceptions on that.

Forgive me if I just remind you that I came straight out of management to resolve the problems over Understanding NI and I have a very nice letter of appreciation and one commendation from John Richmond. Then it was Ladykiller on breast cancer – repeated twice. A host of programmes since have I think reflected well on the company and in the case of Omagh pulled the company out of a hole in a sense because of the bad PR over the network Omagh show. Other award winners for what its worth. There are few things I enjoy as much as making programmes – even the bits tht others don't particularly relish such as the edit. Hours have never mattered, or where.

From Rob's appointment at the outset I went to him and said I held no grudges, was looking forward to doing my job and trusted tht he didn't have any problems or have any feeling tht I did. I said I wanted to make the situation as easy for him as I could, that I would support him, give him his place and expected he would give me my place as senior producer. He agreed but has never done so.

He continually avoided speaking to me, talked to more junior people working on programmes, told them he was thinking and not me. He had newsroom reporters working on future Insights without having mentioned it to me. Embarrassing for me when reporters came to me for advice or information.

My position has consistently been undermined ever since. Rob clearly made the point tht he was the editor, tht he was calling the shots and through the way he dealt with me and with Mary, Trevor, Brenda and others working on the show from time to time, it was clear tht I was not the boss, had no authority over the other members of the team and was to be treated as equals with them. In fact he probably consulted and discussed with Trevor more than anyone, and Trevor would happily admit that. But sadly Rob was seldom around and a lot of things fell by the wayside.

Some I picked up but others I didn't have the authority to do.

My concern is tht my reputation or how others in management (and I live in hope that's a positive view) view me has in some way been undermined as well.

Not once – twice I confronted him. Twice he accepted he may have done tht unintentionally and would avoid it again. No difference.

Now I don't run around with a catalogue of details in my head, but all I can do is mention a number of occurrences which stick out in my mind. But there are many others I've forgotten about. In no particularly order.

If we go back to the Andrew Peden show shortlisted for an RTS. I don't need an awards dinner and Alan I think at the time you accepted that I wasn't the sort of person to push an issue like this for no reason. I had all the paperwork to provide that I produced the show, even elements of the script that I'd written. The issue should never have arisen but Rob denied that I produced it, you were I felt obliged to support him despite by 'evidence'. Now in hindsight Trevor has no admitted tht he was wrong to go along with what Rob said. That I did produce the show. But Trevor was fairly new at the time and was, I think, trying to be in Rob's good books.

In other cases, Rob continually undermined and chose to ignore my input into programmes. He pulled Jane Loughrey back from a weekend in Dublin for the IRP awards. The Omagh wedding show, which he consistently referred to as Jane's show. All Jane did was ask the questions I gave her. I structured the whole programme, planned the shoot at the church in advance with Donovan etc. Did the entire edit. Jane was there but no commentary, Claire Gallagher music. Put it together entirely. Donovan got a £500 bonus. I didn't even get thanks.

This year Boston with Ivan Little. Apparently he asked Brenda to go but she couldn't because of

pregnancy. Mary couldn't go because passport out of date. I the most experienced producer, last resort. That show would not have been great without my input and Ivan would admit it. A different thing, news/current affairs. It was like Rob resented me going. I called him. Didn't call me once.

Apparently he didn't like Gay Pride and Kosovo – told Trevor no commentary. After Omagh wedding won he sat down in front of all of us and said the judges were particularly taken with the way the programme worked so well without commentary – that's something we need to think about doing more of.

Don't know if you're aware but in many many programmes all or some of the interview done by me. Reporters come in later. Offered myself to Rob as reporter but he didn't like the idea. I speak the language more fluently and correctly than some of our front of camera people and I'm sure I look as acceptable as some of them.

Drumcree – year 1, no decision, down with Niall, no accommodation, no crew, office Macmillan crew when it all went up. Year 2/3 'lives' from field to annoyance of Beeb. Because of me. Booked site, nursed reporters through their first lives. This year – already laid plans but Rob said he doesn't want me to go.

Waterfront 1, I booked room, back stairs. Cleaned up. This year same. Trevor credit for results. Me Trimble. Congrats from Cowan, Dunseath, Lena. Kevin Kelly etc. Not one word from Rob. Didn't talk to me during show.

No decisions. Lost filming and edit days. Two programmes half-shot because he changed his mind.

New editor – who the fuck does he think he is/arrogant and difficult to work with.

Despite all this I tried to maintain and demonstrate commitment by attending morning news meeting

> because at least I could find out what was going on because no communication from Rob.
>
> Rob said he would produce shows but minimal involvement. I don't think he even knows that I still sorted out studio, promos on occasions, kept crews advised etc. Not just me – ask anyone involved. I feel off-loading blame for any perceived shortcoming.
>
> In a sense hurt about the editors job. Think I'm ideally placed and experienced, but offered to Ivan last time. I asked if he'd be happy if I got the job and he wouldn't answer. Told me this time if I got it, would be a maximum of £2K extra – but I understand Justin got the job at significantly more money. Told one colleague Justin reporting as well, told other that didn't come up. Editor/reporter – why not me?
>
> Throw in a few hand grenades, as if we've been lacking in some way. Major changes. Insulted. Rob is the editor after all.
>
> Personal credibility and integrity what keeps me going, demoralised, undermined and exhausted. Nothing I want more than to do the job and do it well – continually frustrated, lack of leadership and direction. I cannot shoulder responsibility for that. Re-structuring benefited a huge number of staff – I'm earning what I did 9 years ago.
>
> Look forward to new editor. Even after all this I don't have a problem with Rob. But clearly he has a problem with me."

[22] The plaintiff complained that Mr Morrison had asked him to commence productions and then they were stopped after some time had been spent on them. The plaintiff was then left to explain to people who had cooperated or been interviewed, why the programme was not now proceeding. These people were justifiably angry and the plaintiff was left to deal with them, though the decision to halt the programme was not made by him. He recalled a discussion with Mr Morrison about a new position as Editor. Mr Morrison told him it would only be worth a further £2000 a year, yet when a Mr O'Brien was appointed he was paid considerably more. The plaintiff told Mr Bremner and Miss Regan that as a result of Mr Morrison's treatment of him he was demoralised, undermined and exhausted. The

plaintiff believed the meeting ended with agreement to have another meeting with Mr Morrison present.

[23] On the same date Miss Regan sent him a memo summoning him to attend a Disciplinary Hearing in her office at 3.30pm on 9 June 2000. The plaintiff received this memo on the 8 June 2000. The memo stated –

> "Re: Disciplinary Hearing
>
> Please attend a Disciplinary Hearing in my office on Friday 9 June 2000 at 3.30pm.
>
> As outlined in UTV's Disciplinary Procedures you have the right to be accompanied/represented during the disciplinary process by a work colleague or a staff member who is a trade union official.
>
> As you are aware, from our meeting this morning, the Disciplinary Hearing will consider your behaviour in relation to the repayment of an advance of £2,403.00 made to you by the Company.
>
> Please confirm with my office that you will be attending this meeting."

[24] On 9 June 2000 the plaintiff paid the outstanding money relating to the flights together with interest. At 3.30pm that day he attended the meeting to which he had been summoned by Miss Regan. He was accompanied by Mr Nesbitt as permitted by paragraph 4.1 of the Disciplinary Rules. The plaintiff said he was in a very emotional state after the meeting on 8 June and felt completely shattered. He was unable to read the statement that he had prepared so Mr Nesbitt read it on his behalf. This stated –

> "It has been a profoundly upsetting and emotionally exhausting 24 hours. To face a disciplinary process after a blemish-free career since I started in UTV 24 years ago has been deeply hurtful.
>
> Particularly since it has been over an issue which could have been easily and comfortably resolved without going to these extreme lengths. And particularly since it was sprung upon me with no advance notice of any kind.
>
> 1. Initially I paid for the flights with my own credit card, happy to do on behalf of the

company. This was done in full consultation with Linda McMaster.

2. At all stages Linda was advised. As soon as the flights were cancelled I discussed it with her and said I would advise her when the refund came through to my credit card.
3. As soon as the flights were cancelled I also advised Rob and other colleagues that we would be travelling instead by military aircraft.
4. When the refund came for the Belfast-London element of the flights, I brought that straight away to Linda.
5. When the refund came through on my credit card at Christmas for the London-Pristina element, I informed Linda in January.
6. At no stage was anything done to in any way conceal any of the details.
7. During January and February it was in my mind that I had to refund the company but it simply wasn't a major priority, not least because the company owed me a comparable sum. Consequently I felt no great pressure and no one was pressing me for payment.
8. The only pressure I was feeling was in work. In January, amongst other programmes, I filmed/edited for 8 days without a break, including going out with trawlermen at 5.00 am for 24 hours, and subsequently to the fish auction at 5.00 am. At times like that expenses are the last thing on my mind.
9. In February there was a 10 day stretch with no break, filming with Ivan in the US and London and then straight into edit.
10. In April Linda phoned me to remind me the money was outstanding. I told her I would resolve it, my intention being to press Rob to settle my outstanding payment which he'd been sitting on since November.
11. On the 18th of April she e-mailed me a message reminding me, and asking that I pay as soon as possible.
12. By this stage it had been more than 5 months since I had given Rob details of my outstanding days from 1999. I had reminded him several times of this and he assured me they would be paid soon.

13. On May 15th, in an effort to resolve the situation, I called round to see Jack Crawford who I believed was the appropriate manager to talk to and told him that payment for outstanding holidays was imminent, and I suggested we could balance the pence then since the two amounts would be very similar. He said 'That's fine. As long as I know what you're doing that's fine." I spoke with Jack yesterday and that's exactly as he recalls it. I based that conversation on Rob's comment that payment would be sorted soon. (Ultimately that was not the case).
14. At no stage did I consider my agreement with Jack to be anything other than a convenience. At no stage was anything hidden. At no stage did I suggest anything other than that I owed the company – and the company owed me.
15. The next I heard about it was yesterday morning, Thursday 8th when I walked into a meeting. I was stunned then, and remain so.
16. At the meeting I offered to pay the outstanding sum there and then. Alan asked me to pay Jack Crawford which I have done. I paid the full amount outstanding plus an additional amount to cover interest since the allegation is that I benefited from £2000 of the company's money for six months. I did that as an act of good faith and I do not ask or expect the company to reciprocate when it finally pays the money I am owed.

Given the above I remain not only stunned and mystified by the summons to a disciplinary hearing, but also at a loss to understand what I have done wrong.

I went to Jack Crawford, the person who I understood to be the correct person to deal with. At no stage did he lead me to believe he was anything other than the correct person. We made an agreement with which he was happy. An agreement he recalled when I talked to him yesterday.

> An agreement which no one suggested to me, then or since, was in any way inappropriate, unauthorised or unsanctioned.
>
> When I walked out of Jack's office that day I felt confident that the issue had been resolved – save sorting out the pennies whether I owed the company or the company owed me."

[25] Minutes were taken of the disciplinary meeting and the plaintiff agreed their content. They stated –

> "AB opened the meeting stating the fact that the group had met the previous day 8 June 2000. Following that meeting it was considered necessary to hold a formal disciplinary meeting and to offer Michael the opportunity to bring forward any additional information or comments he had not had the opportunity to raise the day before.
>
> AB reminded Michael that the issue to be discussed was his failure to reimburse the Company the sum of £2403.60. At this point Mike Nesbitt read out a statement which had been prepared by Michael Beattie [see statement attached].
>
> AB said he would deal with each of the specific issues raised.
>
> In his statement MB had said that the meeting had been sprung upon him with no advance notice of any kind.
>
> RM said that he had spoken to Michael that morning prior to the meeting.
>
> MB said 'Yes you told me there was a meeting at 12.00. You told me in front of others. When I asked you later what it was about you said it was about a cash advance. I confused this with a meeting I had requested with Mairead and A Bremner.
>
> Mike Nesbitt said that the issue of the timing of the notification of the meeting was a side issue.

AB said 'Given your seniority you should have know without prompting that any money that is advanced to you should be returned to the Company'. He said it was reasonable to expect that the money would have been returned immediately or at least promptly. He said that Michael himself had said in his statement that he knew that the money had to be returned in January or February but that it was not a major priority, not least because the Company owed him a reasonable sum of money.

AB said that the Company believed Michael made a decision to withhold the sum of money in anticipation of a deal that was not done.

MB said the decision was certainly not made in that context. He said 'I knew I owed the Company money, the Company owed me. There was no sense of malice it was just a convenience.

AB said 'But you knew you should have repaid the money and you didn't'.

MN said MB had it in his head, he knew he owed the Company money but it wasn't a big issue for him as the Company owed him a comparable sum. On 15 May he went to see Jack Crawford and Jack Crawford said it was OK.

MB said 'Jack said to me 'that's fine as long as I know what you are doing'.'

AB said 'The statement that you have had just read out confirms that you, Michael knew that the money should have been returned. However because of pressure you did not give it a priority. A number of months passed and you then came to a decision that it was reasonable for your to keep the money in anticipation of money that you thought was owed to you'.

MB said 'Well strictly speaking it wasn't after a number of months, I always felt very little pressure to return it when I knew the Company owed me money'.

AB said 'This was a unilateral unique decision. It is an extraordinary presumption of yours to withhold this money. It was a considered decision in anticipation of money that you thought was coming to you'.

MB said 'But every other year RM sorted out the leave with a financial payment.'

RM said, 'It was only at the end of March that I started to look at the leave requests. In fact we give staff up until the end of March to get rid of their leave and to submit their claims so I really start looking at the claims after April. You did not refund the money even from January to April.'

MN said 'But Michael had agreed with Jack that it was OK at this meeting on the 15 May so what is the problem?'.

AB asked 'Could we agree that everyone employed by the Company has to return any money that is advanced to them?".

MN said 'Can we also agree then that UTV is equally obliged to pay money it owes to staff?'

AB said, 'Every employee knows that money advanced to them for expenses has to be handed back as soon as possible. Michael in his statement recognised that he knew it should have been returned but he didn't prioritise it. He took a considered decision. He decided it was legitimate to keep the money because in Michael's perception the Company owed him money. He decided to withhold money which he already recognised was due at the start of the year.'

MN said 'Except he checked it with Jack Crawford and Jack told him it was fine.'

AB said 'That is not the case. Prior to this he had two reminders from Linda McMaster which he did not respond to. On 15 May he did have a conversation with Jack Crawford but Jack Crawford did not endorse it. We are now speaking three weeks later

and the situation has not changed. You knew you owed the money, you said you were too busy and even following two requests you did not return the money. It was a calculated decision.'

MB said 'I did respond to Linda's first reminder and said 'yes, I forgot all about it, I will get round to it'. She then sent me an e-mail on 18 April to pay as soon as possible but I didn't respond to this e-mail from a clerk in the accounts department. I decided I had to go and talk to Jack and as far as I was concerned it was resolved.'

MR said 'But even before the conversation with Jack on 15 May, you had not repaid the money from November 1999 through to May.'

AB said 'You made three decisions not to return the money and decided to link it to the money the company owed you.'

MN said 'It is very clear that on 15 May Michael spoke to the relevant manager and was told that it was told that it was fine.'

AB said 'Throughout this entire process you knew with absolute certainty that you should have paid this money back.'

MB said 'Yes and at a point in the process I started to link it to the money owned to me by the company.'

MN said 'And when Michael was tested for the first time by Jack Crawford, he said OK.'

AB said 'But he was asked on previous occasions by Linda to return the money.'

MN said 'If this is unreasonable behaviour on Michael's part, why is it reasonable for an employer to sit on days owned?'

RM said 'It has not been agreed that we owed MB days. He has submitted his claim, he cannot assume that he will be automatically be paid for 26 days.'

MB said ' I based this assumption on the fact that in March or April of this year Rob Morrison said I would be paid for my leave.'

RM said 'I had said it would be settled in some form.'

MB said 'Payment was mentioned to me.'

AB said 'Jack Crawford is a belated secondary issue. The first issue is that a person of seniority within the company made a series of decisions, the consequence of which were that he knew he owed the company a considerable sum of money and decided not to return it. This series of decisions does not meet the standards expected of an employee.'

MB said 'But this approach was endorsed by the relevant manager.'

AB said 'But the procedure with regard to advances are clear.'

MN said 'Are you saying that all employees know what the procedures are.'

At this point the meeting ended and it was agreed to re-schedule the meeting the following Monday afternoon."

[26] The next meeting took place on 12 June. The plaintiff was accompanied by Mr Nesbitt, and Mr Bremner, Miss Regan and Mr Morrison attended. Again minutes were taken which the plaintiff agreed were reasonably accurate. These sated –

"Alan Bremner opened the meeting saying that the group had agreed to meet again following their meeting on 9 June. He said that the meeting could be succinct and the issue rounded up unless Michael Beattie had anything else that we wished to add to what had been discussed on the previous Friday.

MB said he had very little to add but he did have some questions. He said the process had been 'agonising' for him, that he did not want to prolong it but he wanted to outline the facts as he saw them. He said he wanted to underline why he had equated the two things – the money that he owed the company

and the money that the company owed him. He said 'In my experience it has been custom and practice that everyone gets the bulk if not all of their days paid. Even if I should never have linked the two things, even if I was lax and even if I breached company policy it was not a sudden action on my part. The response of the company has been very extreme and formal'. He said that given the way events have turned over the last few days he had a few reasonable questions which might put his mind at rest. Michael Beattie asked Mike Nesbitt to note down the answers.

Point 1. MB said that Linda McMaster had phoned him to remind him about the repayment and also e-mailed him to ask for payment as soon as possible. Michael said there was no suggestion the money was needed immediately, there was no hint that money was outstanding for too long. He asked why Linda did not take it a step further and use the word urgent or immediately.

AB replied 'This strikes me as an extraordinary question when you knew at the beginning of the year that money was owed but you did not give it priority. You have already acknowledged that the money was late, why are you asking this question about Linda when you knew that the money was owed. Linda would certainly not have come on heavy to you given your level of seniority.'

MB asked 'Why did she not even use the word immediately or urgently?'

AB said 'You knew it needed to be done. The company would presume that a man at your level of seniority knew that is needed to be paid. To ask this question about Linda strikes me as a bizarre question.'

MB asked 'Linda advised me on two occasions that the money was outstanding, was it not her place to tell me to pay it immediately?'

AB said 'She contacted you twice to remind you to repay it, surely that is sufficient for someone of her position. It is clear enough instruction.'

MB went on to point 2. He said 'Why did Jack Crawford, the Accounts Manager, not demand urgent payment.'

AB said 'You must not lose sight that the onus was on you to repay the money and you knew that the onus was on you. There was a time lapse from Linda identifying that the money was owed, reminding you and then referring the matter to Jack Crawford because the money was under the Programme file rather than as a Cash Advance. Linda had filed it under a Programme Project. As soon as Jack Crawford learnt of it he acted upon it. He came round to your office and left you a note.'

MB said 'He did not ask me to pay it immediately or else I would have paid it.'

AB said 'Michael, you are a senior person in a position of trust, Jack would have been very reluctant to have demanded the money that you owed to the company. He went to find you and left a note or message for you to speak to him. When you actually came round – without him actually having to ask you for the money – you said 'I know why I'm here'. 'We have spoken to Jack and got a statement from him.'

At this point of the meeting the statement was given to both Mike Nesbitt and Michael Beattie.

AB said 'Whether or not Linda and/or Jack used the words immediately or urgently, you knew yourself, it was written large in your mind that the money had to be repaid.'

MB said 'Why did Jack not say this needs to be paid now or urgently?'.

AB said 'Are you saying that you believe that money should only be returned if another member of staff has to ask you for it?'

MB said 'No, I accept that as soon as the money was refunded, I knew I owed it to the company.'

AB said 'Is it not reasonable, no matter what position you are in the company, that if you have approximately £2,3000 of the Company's money that you will repay it and not withhold it for six months?'

MB said 'If any senior manager had brought it to my attention or if Jack had asked me to pay it immediately I would have done so.'

AB said 'The company would have presumed that someone like you did not need to be asked. We would have relied on your professional judgement. It would have been very difficult for Jack who is by nature diplomatic to demand that you repay the money.'

MB said 'Jack asked to see me about Kosovo, not about the money. I had told Jack that I owed the company £2,500 and the company owed me approximately £2,500. I asked him was it ok to sort out the balance, to which he said 'That's fine as long I know what you are doing'

MR said 'Did Jack not tell you that he had to refer the matter to Jim Downey?'

MB said 'I don't remember this, why would Jack have made an arrangement with me?'

AB said 'The matter was referred to Jim Downey who was flabbergasted. Jim then spoke to Rob, Mairead and me'.

MB said 'As I understand it, Jack and I made an arrangement and I left the room assuming that this was OK.'

AB said 'Jack did not endorse your retention of that money. I cannot comment on his exact words but Jack has told us that he told you the matter needed to be sorted. It is entirely reasonable of the company to expect that you would have returned this money long before the 15 May.'

MN said 'We were not aware at the meeting on 15 May that the matter had been referred up. Michael

Beattie thought the issue was sorted. Only last Friday did he learn that the matter had been referred up.'

MN said 'If Jim Downey was so horrified why did he not say to Jack to get this matter sorted, that if it wasn't sorted it could fester and could end up here at a disciplinary process?'

AB said 'Jack Crawford would never have the authority to reach such an arrangement at the end of a period of someone withholding money from the company for six months. Jack would certainly not have presumed that he had that authority and he is careful not to exercise that authority. Nor would Jack have condoned this. It was his responsibility to say 'get it sorted'. The company are presuming that you would have acted professionally and would not require Jack to ask you to please conduct yourself professionally.'

RM said 'When Jim Downey came to make me aware of the matter I did not know anything about it. I was not aware of any arrangement that was made. Any deal should be done through me as your line manager. I should know about any deal that was done. I was actively involve in the negotiations with regard to your days off in lieu but I didn't know anything about the money that was being withheld.'

MB said 'I had asked Jack whether I could balance the two amounts and he said 'fine as long as I know what you are doing'. I came round to see Jack, he didn't ask me for the money. I offered to repay it that way and he said 'that's fine'.'

AB said 'It was entirely reasonable for Jack to chase the money that was outstanding as this falls within his area of responsibility. With regard to other questions regarding salary, or days owed, it is reasonable for Jack to assume that these would be sorted out through the involvement of the line managers and that certainly Alan, Mairead, Rob, Jim and I would be involved in this discussion. Part of Jack's role was to get the money back, Jack would never presume that a deal could be hatched. The presumption here was that no one in the company

would need to prod you for that money. You are basically saying 'Alan I didn't get sufficient prodding to reply this money'.'

MB said 'I'm just asking why did Jack agree with me.'

AB said 'Jack is quite certain that he did not agree a deal with you nor endorse that deal.'

MB said 'There are obviously two versions of one conversation.'

AB said 'There is no doubt what Jack wanted was the money to be repaid.'

MB said 'Are you disputing my version of events? Is Jack denying that he said 'that's fine as long as I know what you are doing?'

AB said 'I can't comment on his exact words but I am quite certain of the outcome that he wanted. He wanted the money back. He did not have the authority to make a deal.'

MB said 'I believe I had an agreement. Jack did not come back to me so I presumed everything was fine.'

Michael asked Rob 'When did Jack refer it to you?'

RM said 'Shortly after your conversation with Jack. I can't remember the exact date.'

MB said 'As my line manger did not think about asking me?'

AB said 'When Jim saw that such a large amount was outstanding he came to both me and Mairead in disbelief. He could not believe that the matter had not been resolved by you as a senior member of staff.'

RM said 'Jim had wanted to know if I had approved or signed off this arrangement as your line manager.'

MB said 'Did you not think of coming to me or to ask me about it.'

RM said 'Possibly but the matter had already been referred to Mairead and Alan.'

AB said 'By any standards this is a serious matter. We do not want you to minimise it.'

MB said 'I certainly don't underestimate the gravity of it.'

MB said 'Have you had reason before to remind someone of money that was outstanding.'

RM said 'I can't recall.'

MN said 'You have – me. It was to do with the Washington Hotel. I paid by credit card.'

RM said 'I can't recall this but in this case no one came to me and made me aware.'

MB said 'It was not a sudden action. At what stage did this become a serious offence and why was I not given an opportunity to avoid it being a serious offence?'

AB said 'As soon as we learnt about it it became a serious offence. RM asked you to come to speak to us and he advised you that it was a serious matter. We've had two meetings prior to this. The whole thing could be sorted out succinctly. What you're doing now does your case no good. I'm astounded by what you're saying when you knew in January that the money needed to be paid back and you didn't do it."

MB said 'If I breached company policy on prompt payment, why an I being treated differently to the stated policy and therefore being treated differently to other staff members?'

AB said 'The company policy is that you pay the money back promptly.'

MN said 'No the policy is failure to repay will result in money being deducted from your salary. This is UTV's policy on cash advances.'

RM said 'This is not a cash advance, it was done as a programme expense.'

AB said 'This principle remains the same. MB owes UTV over £2,300. The procedure is that you are required to pay this back promptly.'

MN said 'If the money is not repaid the policy is that it is deducted from your salary and if this is the case no further amounts are paid to you.'

AB said 'Are you sure you want to ask that question? If the policy is that we deduct the money, instead the company tried to be kinder to you. We contacted you three times – surely it would have been harsher to deduct the money without referring to you.'

MN said 'The company policy is if you don't' pay it back there is a penalty, the company will take if off your salary. Michael could be relaxed about this.'

AB replied 'Are you saying that Michael Beattie comforted himself by saying 'oh well the company will take it out of my salary' and that when the company contacts him to ask for the money he will be thinking I wish you'd just taken it off my salary? This is an extraordinary question. The company has behaved in a way to give Michael every opportunity to pay back the money over the five/six months. We did not take the harsh option.'

MN said ' But why did the company not follow the printed company policy.

AB said 'The first step is to ask for the money. If that is not taken up we could take it off salary but it is reasonable for the company to say we do not need to go to the stage of deducting it from salary, it is more reasonable to prompt the person and ask to have the money back.'

MB said 'It is custom and practice that when the money had not been repaid, no weekly or monthly expenses are paid while the money is outstanding.'

RM said 'You know that this was not done on a cash advance form. This was a programme expense.'

MB said 'I don't know the steps involved. I asked Jack for the documentation but Jim has it."

AB said 'As soon as the company knew about it we advised you. As soon as we knew about it we did the decent thing. What we are basically talking about is that the company expects someone to know that £2,400 outstanding is not acceptable. We expect prompt repayment. Unless there is anything else you want to add?'

MN said 'You said this could be easily resolved.'

AB said 'Yes by accepting the decision that was made. This is a serious matter, which we believe warrants a written warning which will go on your personnel file. You knew what was expected and you failed to hand back the money over a period of time. This written warning will stay on your file for one year.'

MR said 'If you wish to appeal this decision you can register the appeal within two working days of receiving notification of the outcome and the appeal will be heard by John McCann.'

MB said 'I am sorry this has taken so long. I did have other questions regarding the procedure. Some of it I don't think has been terribly well handled. I didn't get sufficient time to prepare but I feel a bit punch drunk and we'll end it here'."

[27] In his evidence the plaintiff maintained that his arrangement with Mr Crawford was "transparent and above board". He said that Mr Crawford neither demanded urgent payment nor set any deadline for payment, that James Downey (the "senior person in accounts") had never spoken to him about this matter and that Mr Morrison had never asked him to repay it. He maintained that as soon as Mr Morrison had been made aware that there was an issue about money he should have raised it directly with the plaintiff and that he had not done so. In particular Mr Morrison had never stated to him that this was a serious matter nor had he asked him to speak to Mr Bremner and Miss Regan about it. At the end of the meeting Mr Bremner announced their decision. This was that the failure to repay the money to the company was a serious matter which they believed warranted a written warning in the

plaintiff's personnel file. This adjudication was reached without the disciplinary panel conferring beforehand. The plaintiff said that at one point in the meeting Mr Bremner became agitated and shouted at him and a result of this he did not pursue the others matters that he intended to raise. The plaintiff had a right of appeal to Mr McCann, but he declined to exercise that right. He thought Mr McCann would simply support his management team.

[28] At the end of this process the plaintiff said he was totally drained, exhausted and devastated and exceedingly anxious for his future. He attended his General Practitioner the following day, 13 June, complaining of episodes of panic attacks due to stress at work. He told his GP that these occurred once a month. His GP prescribed Diazepam to taken when required.

[29] Miss Regan wrote to him on 16 June 2000 summarising the disciplinary process and the finding of serious misconduct and that a First Written Warning would be held on his personnel file for a period of not less than one year. The letter stated -

> "Re: Disciplinary Hearing
>
> Arising from the investigatory meeting on 8 June and the Disciplinary Hearings on 9 and 12 June 2000, I wish to confirm the outcome of the meeting.
>
> 1. You accept that you received money from the Company (Total £2,763.20) on 25 November 1999 in relation to a trip to Kosovo in connection with the Insight programme.
>
> 2. The trip did not take place as the commercial airport was closed.
>
> 3. The Company received a credit voucher from Carlson Wagonlit for £359.60 (Belfast-London element of the flight). The balance outstanding was £2,403.60 (London to Prestina).
>
> 4. At the meeting on 9 June 2000 you stated that "During January and February it was in my mind that I had to refund the Company but it simply wasn't a major priority, not least because the Company owed me a comparable sum. Consequently, I felt no great pressure and no one was pressing me for payment.'

You stated that during January and February it was not a major priority particularly due to pressure of work and that from March you did not refund the money not least because the Company owed you money.

5. You also accept that you had three reminders to repay the outstanding amount – two from Linda McMaster, Finance (one by e-mail on 18 April) requesting you to 'pay as soon as possible'; the third from Jack Crawford, Office Manager, during week commending 15 May 2000.

6. At this meeting with Jack Crawford you told him that payment for outstanding holidays was imminent and told him that you would be balancing the two sums and paying the difference ie you came to a decision that it was reasonable for you to withhold the money (which you already recognised as due at the start of the year) in anticipation of a payment for holidays that was not agreed. At no stage was this discussed with your line manager Rob Morrison or with your Head of Department, Alan Bremner.

7. In these circumstances, UTV finds that you failed to repay a total of £2,403 to the Company, in line with Company procedure, which is a matter of serious misconduct which warrants a First Written Warning. This warning will be held on your personnel file for a period of no less than one year.

As outlined in UTV's Disciplinary Procedure, you have the right to appeal this decision. The Appeal should be lodged with the Human Resources Department not later than two working days after receipt of this notification. Any appeal will be heard by the Managing Director.

Please sign and date the attachment below, confirming your receipt of this outcome."

[30] The plaintiff acknowledged receipt of the letter on the same date. In his evidence he said he found this a devastating blow as his record for honesty and integrity date was unblemished. He continued to work that week but attended his GP again on 21 June 2000 complaining of significant ongoing distress at work. The GP felt the plaintiff was unable to cope with the strain of work at that time and provided him with a medical certificate for two weeks. The plaintiff had a holiday in France arranged for July which he took with his wife, and then returned to Northern Ireland. He went to see his GP again on 25 August 2000 and he found him to have obvious symptoms of depression with excess tiredness and early morning wakening. He continued to take medication. He saw his GP again on 15 September, 2 October and 20 November 2000. His GP concluded that he suffered a severe and prolonged anxiety disorder and he was referred to a consultant psychiatrist. He attended the Albertbridge Day Hospital between January 2001 and December 2002.

[31] On 15 September 2000 Miss Regan wrote to him requesting a welfare meeting to discuss any actions the company could take which might assist him to return to work. This meeting took place on 28 September 2000. There was a discussion about the meeting yet to be held relating to his relationship with Mr Morrison, but the plaintiff was unable to contemplate such a meeting at that time.

[32] The company arranged for him to be examined by their doctor, Dr Dean. This took place on 29 January 2001. Dr Dean's impression was that the plaintiff was genuinely unwell at that time and that he was unfit to return to work. Dr Dean expressed serious reservations whether the plaintiff would ever be fit to return to work.

[33] In June 2001 the plaintiff's consultant psychiatrist was advising that it was too early for him to consider a return to work at UTV. The plaintiff had already consulted his solicitors about the disciplinary process and his grievances, and there was ongoing correspondence between them and the defendants' solicitors. On 4 June 2001 Miss Regan wrote to him again requesting to meet with him. He responded on 21 June 2001. The relevant part of this letter stated –

> "Thank you for your letter of June 4th. You suggest that you would like to meet with me to discuss and consider any steps UTV could take which might assist me in my return to work. I find it very difficult in the current circumstances to envisage returning to work at UTV because of, amongst others, the following factors:
>
> a) I do not believe that UTV has substantively addressed the fundamental problems which

have resulted in my ill-health and the concerns which have been extensively outlined in correspondence;

b) I am not satisfied that UTV will impartially and fairly investigate my original grievance and my concerns and take appropriate action in respect of UTV's unfair managerial approach, treatment and behaviour towards me;

c) UTV's continued unwillingness to accept and recognise that the disciplinary procedure was unjustifiably implemented against me following the original grievance which I had raised.

All UTV have suggested through their former solicitors is that they are prepared to fully investigate any grievances which I raise and to take appropriate action in respect of any matters. Without wishing to repeat myself, you will appreciate that I do not have any confidence that any such investigation will be undertaken fairly and properly, given UTV's attitude to date.

I am surprised that for whatever reason UTV have not made available to me a copy of the report(s) of UTV's own medical experts, or indeed any report obtained by UTV from my own GP. I understand that I am entitled to have sight of such medical reports and I would remind you that I had previously sought to exercise my right to access to these reports.

In all the circumstances, I do not believe that any meeting, whether at UTV's premises, at my home or elsewhere, would progress matters unless there is a dramatic change in UTV's attitude and approach to my predicament, and unless UTV have some new proposals to put to me. However as a consequence of your letter I attended again with my Consultant Psychiatrist, Dr Brian Fleming. I propose to make his resulting report available to you through my solicitors as soon as this has been received. You will appreciate that in relation to my fitness to return to work, I have to be guided by the advice of my own Consultant."

[34] On 4 September 2001 the plaintiff wrote to Miss Regan informing her that he would not be able to return to work with the defendants. He considered himself to have been constructively dismissed and indicated his intention to proceed with an application to the Industrial Tribunal. He never did return to work for the defendants. However on 6 October 2001 he commenced work as a self employed freelance film maker, producer and director. This he continues to do.

[35] An application to the Industrial Tribunal proceeded and was resolved at the hearing. The plaintiff indicated that it was never his intention to take action in the civil courts against the defendants in relation to his "dismissal". On 26 January 2001 a writ was issued against the defendant for damages for personal injuries and loss sustained by reason of the negligence and breach of contract of the defendant in and about the employment of the plaintiff. A statement of claim was delivered on 26 February 2001.

[36] At the end of his opening statement Mr O'Donoghue QC, who with Mr McKee appeared on behalf of the plaintiff, summarised the plaintiff's case. This was that over a period of time from 1996 onwards a course of conduct was engaged in, particularly by Mr Morrison, which was designed to ostracise and undermine the plaintiff and to erode his self-confidence and esteem and that Mr Morrison could not have failed to appreciate that it would have this effect. The disciplinary process was wrongful and it was foreseeable to both Mr Morrison and the defendant company that the plaintiff was at risk of psychiatric injury due to its wrongful use. The purpose of the process to which the plaintiff was subjected was not a disciplinary one but one designed to erode the plaintiff's self confidence. There was no objective factual basis for the use of the disciplinary process as the plaintiff had done nothing wrong. Therefore the defendant was in breach of contract. It was also a breach of duty to provide a safe place of work as it must have been clear to the defendant that the wrongful use of the disciplinary process would create a risk of injury to a person subjected wrongfully to that process. Alternatively, even if there was a valid reason for a disciplinary process, the process was operated in such a way that the defendant was in breach of its duty to the plaintiff and it was foreseeable that the plaintiff could or would thereby suffer a psychiatric injury. The defendant company was well aware of how the plaintiff had been treated over the years at UTV and how he had been demoted. The plaintiff had raised with his employer the difficult relationship he had with Mr Morrison. The failure of the defendant to use the agreed contractual procedures relating to disciplinary hearings constituted a breach of contract and the defendant knew or ought to have known that such a breach would give rise to a risk of psychiatric injury. Mr O'Donoghue QC accepted that the plaintiff did not put his employers on notice of his psychiatric problems, but nonetheless the risk of psychiatric injury was a foreseeable one as a result of the defendant's conduct towards the plaintiff.

[37] Mr Ringland QC who, with Mr Ferrity, appeared on behalf of the defendant applied at the conclusion of the opening that the defendant had no case to answer and that the case should be dismissed at that stage. Mr O'Donoghue based his opening on the statement of claim. Order 18 Rule 19 of the Rules of the Supreme Court provides that where a pleading discloses no reasonable cause of action a court may strike out the pleading and order the action to be stayed or dismissed or judgment to be entered for the defendant. If a pleading does not disclose a reasonable cause of action (in effect what Mr Ringland QC was submitting) then the proper course of action is to make an application under Order 18 Rule 19 at the interlocutory stage and not, as in this case, to make an application to dismiss the case at the end of the opening. Having heard Mr Ringland's submissions and Mr O'Donoghue in reply, I declined to halt the proceedings, being satisfied that it could not be said that either the statement of claim or the opening disclosed no reasonable cause of action. While Order 18 Rule 19 does state that an application to strike out a pleading can be made at any stage of the proceedings, where the pleading is a statement of claim which, it is alleged, discloses no reasonable cause of action, it does not seem to me appropriate to wait until the case has commenced in order to make the application. There are issues of costs and court time involved which dictate that such an application should be made at the earliest opportunity. Where an application to strike out under Order 18 Rule 19 on the ground that the statement of claim discloses no reasonable cause of action has not been made before the case comes on for hearing, it should only be in the clearest case that an application to dismiss the case at the end of the opening should be permitted.

The medical evidence

[38] Dr J Lavery, Priory Surgery, Holywood, has been the plaintiff's GP since 1978. He found him to be an inherently nervous person, of whom he observed, there are many in the community. He noted an attendance on 9 January 1989 when the plaintiff complained of episodes of feeling unsettled, having a dry mouth, shaking and of experiencing epigastric discomfort. He prescribed Inderal and diazepam. By February the plaintiff was much improved. In June and October of the same year the plaintiff was prescribed the same medication again. Thereafter he was prescribed Inderal almost continually. Inderal is a beta blocker used for the control of hypertension or for controlling heart beat, as well as for mild anxiety symptoms that occur in predictable situations, for example, in taking examinations or engaging in public speaking. Diazepam is used to assist relaxation and sleep.

[39] Dr Lavery saw the plaintiff on 13 June 2000 (the day after the disciplinary hearing). The plaintiff complained of panic attacks, occurring monthly, due to stress at his place of work. This was the first occasion he noted any reference to his work. He prescribed diazepam to be used when the need arose. The plaintiff attended again on 21 June 2000 saying he was

suffering significant ongoing distress and was unable to cope with the strain at work at that time. Dr Lavery appraised he was unfit for work and provided a medical certificate to that effect for two weeks. After his summer holiday the plaintiff returned to see Dr Lavery on 25 August 2000. He had according to Dr Lavery obvious symptoms of depression. He had been prescribed Prozac but with no improvement, so Dr Lavery prescribed another anti-depression drug Gamanil. It was Dr Lavery's view that the depression was an entirely separate ailment from the anxiety exhibited earlier. Dr Lavery wrote that it was clear that the plaintiff had been having " a considerable bout of distress at work for quite some years". Dr Lavery saw him again on 15 September 2000 to see if there was any improvement as a result of the switch to the drug Gamanil. There was some improvement, but the plaintiff was still complaining of tension and interruption of his sleeping pattern. Dr Lavery saw him again on 2 October 2000. On this date there was no change in his condition. Dr Lavery concluded that due to the severity of the plaintiff's condition there was little chance of a return to work within three months, so he provided a medical certificate for that period. He arranged for the plaintiff to be examined by a consultant psychiatrist. I will refer to the evidence of the consultant psychiatrist later. On 20 November 2000 there was still no improvement and severe anxiety, irritability, lack of sleep, weeping and depression were noted. Indeed Dr Lavery stated that he himself observed the weeping. He increased the dosage of Gamanil. In his letter dated 4 December 2000 Dr Lavery wrote that it was his opinion that the plaintiff "suffered a severe and prolonged anxiety disorder and this may very well have a substantial long term adverse effect on his ability to carry out his normal day to day working activities". Dr Lavery saw the plaintiff again in January and February 2001 when he noted he was making some improvement but was still unfit for work. He saw him again on 2 April 2001 when he was complaining of tiredness, which is a symptom of depression. He carried out blood tests for other causes but the results of these tests were normal. By September 2001 the plaintiff was taking other medication but was still not fit for work. On 15 April 2002 Dr Lavery found the plaintiff more settled but still attending the Albertbridge Day Hospital. The plaintiff continued to attend the Day Hospital until December 2002. By February 2003 his medication was reduced to every third day and he was feeling better. Dr Lavery did not see him again for his depression and stated that he has now effectively made a full recovery from it.

[40] Dr Fleming is a consultant psychiatrist. He saw the plaintiff on 19 October 2000 and in January 2001 provided a report to the plaintiff's solicitors. Dr Fleming wrote –

> "He told me that he felt his psychological problems began after the demotion in 1996. he told me that at the time he lost confidence in himself and he remembered feeling anxious in certain situations,

such as public places or crowded places. He described a sense of helplessness with his confidence in work undermined and he began to doubt his own ability. He told me this was a rather gradual process and he put up with it.

He told me that he felt that the incident in 1999 when he was sent a new contract with further demotion was the point where his mental health really began to suffer. He told me that he felt demoralised and more anxious within himself at times feeling tremulous. He told me that he still managed to continue with his work and enjoyed making programmes.

He told me that the episode in June of this year caused a marked deterioration in how he was feeling with disturbed sleep, constantly thinking about what was going on at work and depressed mood with feelings of despair. He told me that he started to feel exhausted and he experienced tender teeth and a sore jaw which was diagnosed by his Dentist as nocturnal teeth grinding. He told me that he had insufficient energy to continue with his usual physical activities such as going to the gym three times a week or continuing with is cycling club activities.

I understood from Mr Beattie that he had in fact first gone to his GP back in 1996 when the anxiety symptoms first started but there is no record of this in the handwritten records that I can see.

OPINION This 48 year old man gave an account of difficulties in his work dating back to 1993. I make no comment about the liability issue here and I simply state that the events as described by Mr Beattie to me are his perception of what went on. I have no doubt that these are genuinely held perceptions as evidenced from the obvious emotional distress which he displayed when describing the sequence of events.

His perception is of being sidelined from 1993 onwards and from 1996 onwards being demoted and sustaining a good deal of loss in relation to his previously progressive and upward career within the television station.

> He gave an account of psychological symptoms running in parallel with this with what amounts to relatively mild anxiety symptoms from 1996 onwards increasing with the second demotion in 1999 right through until June of this year. Throughout that period of time he continued to function at this work and his emotional symptoms were probably at the mild end of the spectrum. However, his experiences in June of this year appear to have precipitated a marked psychological reaction characterised by both anxiety and depression and the symptom profile which he described is typical of quite a severe Neurotic Depression and his GP has been providing a reasonable level of symptomatic treatment and supportive therapy. With this regime and the passage of time there has been some improvement though clearly he still has a significant level of symptomatology and again I would point to the marked degree of emotional distress at having to go over his experiences during the course of the examination today.
>
> In summary therefore, this man has experienced mild neurotic symptoms of anxiety in relation to his job and the circumstances prevailing there for about four years up until June of this year when he developed a more severe neurotic depressive illness which has persisted up to the present but with improvement. The current litigation process and uncertainty about his job is acting as a perpetuating factor and the likelihood is that he is going to continue to experience symptoms, albeit at a reduced level. The prognosis must remain uncertain for the present."

[41] The plaintiff did not report to Dr Fleming any significant physical or psychological health problems in the past. Dr Fleming accepted that he had not received an accurate history from the plaintiff when he failed to mention to him that he had been prescribed Inderal and diazepam and that he had visited a counsellor. Dr Fleming's evidence was that for a number of years prior to June 2000, the plaintiff had demonstrated relatively mild symptoms of anxiety. The demotion he experienced in 1996 and the erosion of his status as part of the management and the manner in which he was undermined were contributing factors. His experiences in June 2000 brought things to a head and tipped him over into the onset of a reactive depression. He said that persons who are anxiety prone are more vulnerable to depression. A person of normal fortitude would in general terms more likely not suffer depression

on experiencing a severe set-back, however someone like the plaintiff would be more predisposed. He agreed that the plaintiff had not suffered an adverse reaction in 1993 or 1996 but was of the opinion that he had reacted adversely in June 2000.

[42] The plaintiff was examined by Professor D Murphy, a London Consultant Psychiatrist engaged by the defendant, on 20 August 2002. Professor Murphy is an expert in depression and anxiety and has dealt with many cases involving occupational stress. The plaintiff told him that he had no significant past medical history relating to mental health problems prior to his problems at work in 1999/2000. Professor Murphy said that he considered that was inaccurate, when the records revealed a long standing history of anxiety and counselling for what he understood were mental health problems. He said that after "beating about the bush" the plaintiff had eventually stated that he had sought such treatment, but said he could not remember the dates. Professor Murphy said there was no medical explanation for this lack of recall. Professor Murphy investigated with the plaintiff whether he had made his employers aware of the way he felt. The plaintiff replied that in 1996 he had made the company aware that he felt devastated by events, but that he did not exhibit anything in his day to day behaviour. In his report Professor Murphy wrote that the plaintiff was significantly pre-disposed to develop mental health problems in reaction to stressors at work due to his treatment over a significant period of time for symptoms of anxiety and because he had received private counselling for symptoms of anxiety. When Professor Murphy examined him in August 2002 there were still some low grade symptoms of anxiety and some mild depression but these were of no clinical significance. He did not disagree that the plaintiff had a significant depression, but felt that by October 2001 he had largely returned to his pre-morbid state. He said that the plaintiff had responded quite well following treatment, though he was undoubtedly upset by events. He agreed that feeling demoralised, undermined and exhausted were symptoms of someone suffering or about to suffer depression. He agreed that if a person was "frozen out "over a number of years such treatment could cause psychiatric injury and added that a pattern of harassment or bullying could lead to significant mental health problems that would be reflected in a persons' work. He said that on the balance of probabilities the plaintiff found himself in a difficult and upsetting situation in which he was accused of things that might lead to the loss of his job or dismissal or a warning on his personnel file and in someone with a significant past history that could set off depression. He accepted that the disciplinary process itself might cause a reaction in a person who had not misused money. He agreed that a pattern of humiliation and freezing out and deliberate misuse of the disciplinary process could affect a person's mental health. He did not think in this case that the medical records supported a change in the plaintiff's mental health during the time of the disciplinary process. He did not consider there was anything in the

disciplinary process that could cause depression in someone who did not have the plaintiff's medical history.

[43] The counselling that the plaintiff received was sought partly because of his symptoms of anxiety, but more particularly for non-medical whole-life issues. In view of its nature, I did not consider it of great significance that the plaintiff had not mentioned it to Dr Fleming or Professor Murphy.

[44] Each facet of the case made by the plaintiff was robustly resisted. At the conclusion of the opening it was contended that no cause of action arose in the circumstances outlined to the court. This seemed a surprising submission in light of the many cases coming before the courts arising from conditions in the workplace in which psychiatric injury is alleged or proved. Many issues of law were raised and numerous cases opened. There was little agreement as to the nature of the plaintiff's case. At one point it was contended that the proceedings before the Industrial Tribunal, which were compromised at the door of the court, removed any cause of action the plaintiff may have had against his former employers. Ultimately a decision in the Court of Appeal in England and Wales involving a number of conjoined cases became especially relevant. Then it was learnt that one of these cases was proceeding to the Houses of Lords. After the judgment in the House of Lords was given, a series of cases came before the Court of Appeal in England and Wales. These cases were considered in light of the judgment in the House of Lords. I will refer to these cases later.

[45] It is necessary at this stage to set out the nature of the legal case ultimately made by the plaintiff. The plaintiff's claim was in both contract and the tort of negligence. A useful starting point is the statement of claim. It was in these terms –

> "3. The Plaintiff was at all material time to this action employed by the Defendant. The Plaintiff's present continuous employment with the Defendant began on 1st January 1987. By mutual agreement the Plaintiff's first contract of employment was terminated on 30 June 1999 and a new contract entered into on 1 July 1999("the contract of employment"). The Plaintiff was employed by the Defendant under the contract of employment as a producer.
>
> 4. The Plaintiff suffered psychological upset as a result of the negligence and breach of contract of the Defendant, its servants and agents in and about his employment with the Defendant.

5. It is an implied term of the contract of employment that the Defendant provides a safe system of work and shall take a reasonable step to protect the Plaintiff from risks that are reasonably foreseeable. In particular, it is an implied term of the contract of employment that:

a) the Defendant protect the Plaintiff from psychiatric damage
b) the Defendant does not act in a way likely to cause psychiatric damage to the Plaintiff

6. In breach of the implied term to provide a safe system of work and to take reasonable steps to protect the Plaintiff from risks that are reasonably foreseeable, the Defendant, its servants and agents:

Particulars of Breach of Contract

a) failed to provide a safe system of work
b) failed to provide reasonable care for the Plaintiff's safety
c) failed to take steps to protect the Plaintiff from the reasonably foreseeable risk of psychiatric harm
d) acted in a way likely to cause psychiatric harm to the plaintiff
e) caused the Plaintiff psychiatric harm

The Plaintiff also contends that the breaches of contract set out at paragraphs 7 and 9 below were such that the Defendant, its servants and agents knew or ought to have know that they were likely to cause the Plaintiff psychiatric harm.

7. It is an implied term of the contract of employment that the Defendant shall not act in a manner likely to breach the mutual trust and confidence of the Defendant and the Plaintiff.

8. In breach of the implied term of the contract of employment that the Defendant shall not act in a manner likely to breach the mutual trust and confidence, the Defendant, its servants and agents undermined, seriously damaged and destroyed the mutual trust and confidence between the Plaintiff and the Defendant.

Particulars of Breach of Contract

a) the Defendant, its servants and agents have carried out an ongoing policy of unreasonable and unfair demotion against the Plaintiff

i) the Plaintiff was demoted by the Defendant, its servants and agents in 1993 without reasonable cause
ii) the Plaintiff was not granted salary increases by the Defendant, its servants and agents between 1993 and 1996 when increases were granted to other managerial salaries
iii) in 1996 the Plaintiff was demoted by the Defendant, its servants and agents without reasonable cause
iv) the Plaintiff was demoted in 1999 by the Defendant, its servants and agents without reasonable cause

b) the Plaintiff's ability to carry out his duties as senior producer was compromised by the Defendant, its servants and agents
c) the Plaintiff's authority was undermined by the Defendant, its servants and agents
d) the Defendant, its servants and agents failed to act upon the Plaintiff's complaints about his treatment
e) the Plaintiff was misinformed about the salary of an alternative position in the Defendant company by the Defendant, its servants and agents
f) the Defendant, its servants and agents initiated a disciplinary procedure against the Plaintiff within 24 hours of the Plaintiff lodging a formal grievance about his treatment
g) the Defendant, its servants and agents conducted the said disciplinary proceedings in an unreasonable and inappropriate manner which the Defendant, its servants and agents knew or ought to have known was likely to:

i) cause the Plaintiff additional stress and upset
ii) divert the Plaintiff's attention from the pursuit of his grievance
iii) exert pressure on the Plaintiff to withdraw, or stop pursuing, his grievance

h) the Defendant, its servants and agents imposed a disciplinary sanction which was unreasonable and inappropriate in the circumstances
i) the Defendant, its servants and agents caused the partition walls forming the Plaintiff's office to be removed
j) the Defendants, its servants and agents subsequently provided a portioned office to an employee more junior than the Plaintiff.

9. Clause 1.1 of Appendix 6 of the contract of employment provides that the company grievance procedures should enable an employee to

"*raise a grievance and have them settled fairly, properly and without prejudice to his/her position in the Company.*"

10. In breach of clause 1.1 of the contract of employment of the Defendant, its servants and agents

Particulars of breach of contract

a) used the disciplinary procedure against the Plaintiff to place additional psychological stress on the Plaintiff during the course of his grievances
b) used the disciplinary procedure in an attempt to undermine the Plaintiff's grievance
c) used the disciplinary procedure in a manner calculated to encourage the Plaintiff to withdraw his grievance
d) acted in a manner which they knew or ought to have known was likely to prejudice the plaintiff's position in the company

11. It is an implied term of the contract of employment that the Defendant reasonably and promptly affords the Plaintiff with a reasonable opportunity to obtain redress of any grievance he may have

12. In breach of the implied term to reasonably and promptly afford the Plaintiff with a reasonable opportunity to obtain redress of any grievance he may have, the Defendant:

Particulars of Breach of Contract

a) failed to address adequately or at all the Plaintiff's grievance

b) caused disciplinary proceedings to be issued against the Plaintiff without warning, immediately following receipt of the Plaintiff's grievance

c) used the disciplinary procedure against the Plaintiff to place additional psychological stress on the Plaintiff during the course of his grievance

d) used the disciplinary procedure to attempt to undermine the Plaintiff's grievance

e) used the disciplinary procedure in a manner calculated to encourage the Plaintiff to withdraw his grievance

13. As a result of this treatment, the Plaintiff suffered personal injuries, namely severe stress and psychological upset. Particulars of the personal injuries are set out below.

14. Further, and in the alternative, the Plaintiff suffered stress and psychological upset because of the negligence of the Defendant, its servants and agents.

15. The Defendant, its servants and agents were negligent in the following respects

Particulars of Negligence

a) failing to provide a safe and healthy workplace

b) creating an unsafe and unhealthy working environment

c) failing to take any or adequate measures to deal with an ongoing campaign of harassment when the Defendant knew or ought to have

known that the Plaintiff was suffering, and would continue to suffer, stress and psychological upset: and in particular:

i) failing to implement any or any adequate grievance procedure in respect of the Plaintiff's complaints

ii) failing to provide any or any adequate managerial support the Plaintiff in the carrying out of his duties

(sic)

a) unreasonably reducing the Plaintiff's responsibilities and authority

b) failing to increase the Plaintiff's salary when increases were given to other managerial salaries

c) threatening the Plaintiff with dismissal if he did not comply with the Defendant's decision to reduce his pay

d) unreasonably criticising the Plaintiff's work

e) overriding the Plaintiff's decisions at work

f) failing to give the plaintiff credit for work carried out by him

The Plaintiff will further rely in proof of the Defendant's negligence upon such facts and evidence as are know to the Defendant and its witnesses and are head upon trial of this action.

16. As a consequence of the negligence of the Defendant its servants and agents the Plaintiff suffered the following personal injuries and loss of amenity.

Particulars of Personal Injuries

Anxiety state. The Plaintiff was prescribed Prozac and Gamanil. The Plaintiff was excessively tires and suffered early morning waking. The Plaintiff has suffered panic attacks occurring on approximately a

> monthly basis. The Plaintiff suffered a marked psychiatric reaction in June 2000 including anxiety and depression typical of a severe Neurotic Depression. There were bouts of weeping. The Plaintiff suffered from nocturnal teeth grinding. The Plaintiff suffered pain in his gums and jaw. The prognosis remains uncertain.
>
> 17. By reason of the negligence and breach of contract of the Defendant its servants and agents the Plaintiff has suffered loss."

[46] Subsequently the statement of claim was amended by the inclusion of particulars of loss and damage. An amended defence denied all the allegations in the statement of claim, but pleaded contributory negligence. The contributory negligence related to alleged underperformance in management and various shortcomings relating to programmes and man-management.

[47] Thus the plaintiff's claim was for breach of express and implied terms of his contract of employment and in negligence arising from a campaign of harassment, both of which, it was alleged, led to the psychiatric injury from which the plaintiff suffered. The introduction of a statutory scheme for cases of unfair dismissal and the creation of employment tribunals has led to major advances in the law relating to employment. These included the development of constructive dismissal and the recognition of various terms that have been held to be implied into contracts of employment. The terms that have been implied require an employer to treat his employee fairly. When an employer exercises his powers in such a way as to affect the existing employment relationship, terms will be implied that the employer should act responsibly and in good faith. In Malik v BCCI and Mahmud v BCCI 1998 AC 20, 1997 3 AER 1 it was accepted that an employment relationship may create an implied term of trust and confidence, breach of which could lead to civil action. In that case the House of Lords recognised that an employer may be under an obligation that he would not conduct his business in a manner likely to destroy or seriously damage the relationship between employee and employer. In Johnson v Unisys 2003 1 AC 518, 1999 1 AER 854 the plaintiff sought to extend that implied term as a foundation for a claim at common law for unfair dismissal. It was held that the claimant's case fell within the jurisdiction of the employment tribunal and that the implied term could not apply to the dismissal itself. However that did not prevent an action at common law arising from acts or events that occurred prior to dismissal. These cases are often, but misleadingly, described as "stress at work" cases. While the more usual cases are those alleging stress arising from the nature and volume of work an employee is required to do, more appropriately described as occupational stress, there are many other factual situations

giving rise to actions at common law alleging breach of the implied terms. Eastwood v Magnox and McCabe v Cornwall County Council, both reported at 2004 3 AER 991 are two cases in which allegations were made about the use or misuse of disciplinary procedures and processes. Occupational stress is a developing field of the common law. In 2002 four cases came before the Court of Appeal in England and Wales and were heard together. The first parties were Hatton v Sutherland and the cases are reported at 2002 2AER 1. They were four appeals by employers against awards made in the County Court for psychiatric injury arising largely from allegations of occupational stress. The issues centred chiefly on the principles to be applied in cases of psychiatric injury and the application of them to individual cases. Three of the appeals were allowed and the fourth (Jones) was dismissed, not without some hesitation. The case of Jones has some similarities with the present case. One of the claimants, Barber, appealed to the House of Lords. Judgement in that case was given at the end of July 2004 and is now reported as Barber v Somerset County Council 2004 2 AER 385. Following the guidance given in Barber eight other cases came before the Court of Appeal in England and Wales and a joint judgment was given in those cases in January 2005 – see the appeal entitled Hartman v South Essex Mental Health and Community Care NHS Trust. This appeal highlighted certain difficulties in the application of the appropriate principles, despite the guidance provided in Hatton and Barber.

[48] Between paragraphs 3 and 42 in the Hatton judgment the Court of Appeal considered the nature of psychiatric injury and the duty of an employer in respect of it. In paragraphs 43 the Court summarised its views in 15 practical propositions. These stated -

> "(1) There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing the work the employee is required to do. The ordinary principles of employer's liability apply.
>
> (2) The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable: this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors).
>
> (3) Foreseeabilty depends on what the employer knows or ought to know about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the

population at large. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability.

(4) The test is the same whatever the employment: there are no occupations which should be regarded as intrinsically dangerous to mental health.

(5) Factors likely to be relevant in answering the threshold question include (a) the nature and extent of the work done by the employee. Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made for this employee unreasonable when compared with the demands made of others in the same or comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department? (b) signs from the employee of impending harm to health. Has he a particular problem or vulnerability? Has he already suffered from mental illness attributable to stress at work? Have there recently been frequent or prolonged absences which are uncharacteristic of him? Is there reason to think that these are attributable to stress at work, for example because of complaints or warnings from him or others?

(6) The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think to the contrary. He does not generally have to make searching enquiries of the employee or seek permission to make further inquiries of his medical advisers.

(7) To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it.

(8) The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the

risk of harm occurring, the gravity of the harm which may occur, the costs and the practicability of preventing it, and the justifications for running the risk.

(9) The size and the scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties.

(10) An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this.

(11) An employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty.

(12) If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job.

(13) In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care.

(14) The claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm.

(15) Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrong doing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment.

(16) The assessment of damages will take account of any pre-existing disorder or vulnerability and of the

> chance that the claimant would have succumbed to a stress related disorder in any event."

[49] Barber v Somerset County Council was one of the cases considered by the Court of Appeal in Hatton. Mr Barber was a school teacher who retired early due to stress occasioned by work overload which ultimately lead to a mental breakdown. The judge at first instance found in favour of Mr Barber. The Court of Appeal overturned that decision on the basis that the evidence did not sustain a finding that the school authorities were in breach of their duty of care towards him. Mr Barber appealed this decision to the House of Lords, this being the only appeal from Hatton. The House of Lords by a majority reversed that decision holding that there was insufficient reason for the Court of Appeal to reverse the findings of the trial judge, there being sufficient evidence to justify his conclusions. There were two crucial issues – one was whether Mr Barber's breakdown, which was caused by heavy workload, was foreseeable and the second was whether steps could or should have been taken by the school authorities to prevent the breakdown. Much turned on separate meetings Mr Barber had with two members of the senior management team when he revealed that he could not cope with the workload and that it was becoming detrimental to his health. Nothing was done about his situation following those two meetings. The House of Lords found that the employer had a duty to take some action following those meetings, yet none was taken. In giving the lead opinion Lord Walker of Gestingthorpe at paragraph 65 referred to paragraph 29 of the judgement of the Court of Appeal – see paragraph 29 supra. He stated that the fifteen propositions contained useful practical advice but commented that "it must be read as that and not as having anything like statutory force. Every case will depend on its own facts and the well-known statement of Swanwick J in Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd 1968 1 WLR 1776 remains the best statement of general principle. Swanwick J stated -

> 'The overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential

> consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent."

[50] Three of their Lordships agreed with Lord Walker. Lord Scott, who delivered the only dissenting judgment, preferred the statement of Hale LJ at paragraph 29 as Swanwick J was not dealing with the problem of psychiatric illness caused by stress. Lord Scott stated at paragraph 5 –

> "An employer ought to take steps to understand the implications for the physical safety of his employees of the system of work he is imposing on them. But how can this approach be right where stress caused by a heavy workload is concerned? Most employees can cope. A few may have problems in coping. Only a tiny fraction of them will be at risk of psychiatric illness. And how can the employer even start to consider whether any special steps need to be taken unless the employee keeps the employer informed about his problems? Swanwick J was dealing with a completely different problem. Hale LJ was providing guidance as to the approach to a new problem."

[51] Counsel on behalf of the defendant submitted forcefully that the test for foreseeability in cases involving "stress at work or occupational stress" was that put forward by Hale LJ in Hatton. The judgment in Barber advises otherwise. Foreseeability and the principle to be applied, was one of the issues that arose in the judgment in Hartman v South Essex Mental Health and Community Care NHS Trust, supra. Scott Baker LJ, giving the judgment of the court to which each member had contributed, referred to the different views expressed in the House of Lords in Barber. At paragraph 2 he sated –

> "2. We would like at the outset to make one or two general observations. Liability for psychiatric injury caused by stress at work is in general no different in principle from liability for physical injury. But, as Buxton LJ put it in Pratley v Surrey County council 2004 1CR 159 at paragraph 32, having referred to Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound) 1961 AC 388:

> 'It is not the act but the consequences on which tortuous liability is founded. The defendant will be deemed liable of those consequences, not because he has caused them in the course of some careless or other wise undesirable activity, but only if they were caused by his failure to take precautions against a foreseen or foreseeable and legally relevant danger'.

It is foreseeable injury flowing from the employer's breach of duty that gives rise to the liability. It does not follow that because a claimant suffers stress at work and that the employer is in some way in breach of duty in allowing that to occur that the claimant is able to establish a claim in negligence. As Simon Brown LJ put it in Garrett v Camden London borough Council 2001 EWCA Civ 395, paragraph 63:

> 'Many, alas, suffer breakdowns and depressive illnesses and a significant proportion could doubtless ascribe some at least of their problems to the strains and stresses of their work situation: be it simply overworking, the tension of difficult relationships, career prospect and worries, fears or feeling of discrimination or harassment, to take just some examples. Unless, however, there was a real risk of breakdown which the claimant's employers ought reasonably to have foreseen and they ought properly to have averted there can be no liability'."

[52] One of the six cases considered by the Court of Appeal concerned a Mrs Outhwaite who had been employed by the Home Office. Counsel on behalf the Home Office had submitted that the trial judge had circumvented the guidance given in Hatton and attached too little weight to the fact that it is the employee who knows best whether he is suffering occupational stress and injury to his health and consequently there were good policy reasons for setting the level of the threshold for liability in accordance with the Hatton guidance. The Court of Appeal did not accept those submissions and a paragraph 133 stated -

> "We do not accept these submissions. As is apparent from the way in which the judgment in Hatton is expressed and as Lord Walker pointed out in Barber the guidance must be read as such and not as anything like a statute. Each case will depend on its own facts. Those parts of the Hatton judgment relied on by Mrs Outhwaite were primarily intended to help judges resolve the issue as to whether an employer ought to have foreseen the risk of psychiatric injury attributable to stress at work. The guidance recognises that such injury is more difficult to foresee than physical injury. The question of whether the particular employee has shown indications of impending harm to health is a very relevant question when considering a situation where the employer has not in fact foreseen the risk of psychiatric injury and the employee's workload would not ordinarily carry a foreseeable risk of such injury."

[53] In dismissing the appeal of the Home Office, the employer, their Lordships stated that the only evidence before the trial judge was that the employer did foresee that "employees who were exposed to particular traumatic incidents might suffer psychiatric injury". At paragraph 137 Scott Baker LJ added a word of caution which included this observation –

> "We would end with a word of caution. The mere fact that an employer offers an occupational health service should not lead to the conclusion that the employer has foreseen risk of psychiatric injury due to stress at work to any individual or class of employee. And of course the availability of such a service will mean that the employer is unlikely to be found in breach even if harm is foreseeable (Hatton paragraphs 17 and 33). Moreover in a case where a conscientious employer has assessed that there is some potential risk of psychiatric injury, it will still be open to him to argue that it was a mere possibility or so small that it was reasonable for him to neglect it (see The Wagon Mound No. 2 [1967] AC 617 at 642/3). Nor does it follow that if one employer has foreseen a particular risk, all others in the same field should have done so as well. If there is an issue as to whether a particular employer should have done so, it would fall to be decided in accordance with Swanwick J's statement of general principle in Stokes v Guest Keen & Nettlefold (Bolts & Nuts) Ltd."

[54] Thus the test to applied is not that set out in paragraph 29 of Hatton but the statement of general principle by Swanwick J, supra.

[55] Against that appraisal of this developing field of law I turn to consider the facts of this case. Three principal issues fall for determination. The first relates to the development of the plaintiff's medical complaint particularly from June 2001; the second to the relationship between the plaintiff and Mr Morrison and the third to the circumstances that led to the disciplinary meetings between 8 and 12 June 2000.

[56] It is clear that the plaintiff first complained of anxiety-related symptoms to a doctor as far back as 1989. The defence contrasted this with the plaintiff's failure to give the details of his history to Dr Fleming, Professor Murphy's evidence that the plaintiff only admitted the details after "beating about the bush" and a reply to a notice for further and better particulars in which it was stated that the plaintiff had suffered from mild anxiety from 1996. The plaintiff contended that his pre-2000 symptoms were part of a continuum and were work related. He claimed that they were intermittent between 1989 and 1996 and thereafter more severe. He said that he had visited his GP relating to work-related problems in 1996, though the GP's medical records did not bear this out. It was contended on behalf of the defence that the plaintiff's work-related symptoms did not arise until June 2000 and that whatever he suffered from prior to June 2000 was not work related. The plaintiff believed that he had suffered stress and anxiety for a number of years and that from 1996 he had suffered psychological problems and from June 2000 from psychiatric problems. He attributed this deteriorating situation to his problems at work. He described having panic attacks from as early as 1993. The defence contended that these matters and others relating to his medical history demonstrated that the plaintiff was a dishonest witness who had set out to deceive the medical experts and the court in order to enhance a false claim. It was submitted that the evidence of the plaintiff on all issues should be seen against that background.

[57] Undoubtedly the plaintiff suffered a severe depression in 2000 which required considerable treatment and which lasted a substantial length of time. For a man who had worked all his adult life that was a significant event. The timing of the onset of that depression and its coincidence with the events of June 2000 at his place of work, suggest that in all probability the depression from which he suffered was a reaction to events at work. While his history of anxiety might have made him more predisposed to developing a more serious illness, the evidence does not establish that this was a natural progression from his anxiety and not work related. The production of television programmes, in particular current affairs programmes with their ever changing background and tight deadlines, is a world that makes harsh demands on those involved. A degree of robustness is necessary in the

challenging and competitive world of televisions in order to survive. A person who is naturally very anxious would not survive for long. That the plaintiff did remain for so long, albeit in more recent years in production, suggests that, while he may have had some anxiety, he also had some of the robustness required. The length of time that he remained anxious combined with the duration of his medication, suggests that there was some other reason for this situation rather than a natural tendency to be a little anxious. If that be correct it would tend to support the plaintiff's evidence that he had work related symptoms from long before June 2000. His failure to recount his medical history correctly to Dr Fleming and his apparent reluctance to confide in Professor Murphy, as well as his evidence that he visited his GP in 1996 (which was not supported by the GP records), caused me to look very critically at his evidence in this regard. While those factors remained I did not detect that the plaintiff was seeking to make a false claim or to enhance one. His evidence that the year 2000 was a lost year, a "black hole " as he stated it and that there were periods he did not remember, did not appear to be exaggerated. This might be part of the answer. That there was a compelling reason for his anxiety was apparent. The plaintiff loved his work and enjoyed working for the defendant company. Any threat to that job or his future or the fulfilment he achieved from it, might well create a reaction.

[58] The plaintiff gave evidence at length about his relationship with Mr Morrison and the atmosphere or tension that he alleged existed between them, as well as the manner in which he alleged he was ignored or overlooked in his working environment. Much of this evidence was disputed. Several matters of significance are not in dispute. In the early 1990s the plaintiff was a member of management in a high profile television company. By the late 1990s he was reduced to the position of producer of a certain type of programme. From a position of privileged status within the company responsible for other staff and many programmes, he became another employee. In addition, a person who previously reported to him was now his line manager. This was to use the words of Mr Nesbitt, a "big come down" for the plaintiff. With the best will in the world it was a situation that was fraught with interpersonal difficulties. It is against that background that the credibility of the plaintiff's complaints about his treatment by Mr Morrison is to be considered. The plaintiff's demotion is consistent with his claim that the reorganisation and new management team wanted to break with those who represented the past and makes more credible his claim that the present manager Mr McCann told him many years previously that he was not seen as being committed to the company. I doubt if it is true that he was not committed to the company, though I do accept that his ideas about programmes and his vision for the future differed from the new management team. However no-one disputed his skills as a programme producer.

[59] Brenda O'Neill a former researcher for the defendant gave evidence supporting the plaintiff's claims about his relationship with Mr Morrison. She

left the defendant in 2001 to have a baby. She was accused, wrongly in my view, of being a disgruntled ex- employee with an axe to grind. This allegation included her husband, the editor of a Sunday newspaper. She was a spirited witness who defended her position resolutely. She left little doubt that the broad sweep of her evidence, limited in time as it was, correctly portrayed the relationship between the plaintiff and Mr Morrison. She attributed a certain remark to Mr Birnie who was called on behalf of the defendant. Mr Birnie joined the company in 1998 and is presently Editor of Current Affairs. Brenda O'Neill said he remarked to her about the plaintiff "F….. him. He's yesterday's man". There can be little doubt this represented the opinion held by some within the defendant company about the plaintiff.

[60] Michael Nesbitt is a self employed broadcaster retained by the defendant company. He was subpoenaed to attend and give evidence. He was refreshingly candid about the position this put him in, but he placed his respect for the oath and his conscience above loyalty and self interest. His honesty about his knowledge (albeit limited)of the plaintiff's relationship with Mr Morrison could not be doubted.

[61] Mr Morrison denied any difficulty in his relationship with the plaintiff or that he consciously ignored or undermined him. Mr Birnie supported him in this evidence. Mr Morrison recalled an occasion when the plaintiff spoke to him about the failure of Mr Morrison to give sufficient feedback about programmes the plaintiff was making. Mr Morrison said he expressed surprise and said he was sorry if the plaintiff felt that way. He claimed there was nothing intentional about it. The plaintiff said he spoke to Mr Morrison twice about their relationship. Mr Bremner recalled an occasion the plaintiff came to see him and told him he was uncertain how he was perceived as a programme maker by Mr Morrison. Mr Bremner said he told the plaintiff that Mr Morrison's "bark was worse than his bite". He advised the plaintiff to speak to Mr Morrison and later the plaintiff said he had met him and everything was okay. Mr Bremner also recalled a conversation with the plaintiff after he had been informed about his demotion to senior producer. This was initiated by the plaintiff who was clearly concerned about the course events were taking. Mr Bremner said he spoke to him for about and hour and went into detail about the reasons for the change in his role. Mr Bremner said the plaintiff returned to him about one or two weeks later and said he would do his best in the new arrangement but that he was disappointed. The plaintiff did not recall this conversation. If this conversation occurred and there seems no reason to doubt Mr Bremner's account, should it have been a signal, if signal was needed, that the plaintiff's new position required to be carefully monitored, the more so given Mr Morrison's new role in relation to the plaintiff. Should that signal not have been louder when the plaintiff spoke about his relationship with Mr Morrison in terms that brought the comment that his bark was worse than his bite. Straws in the air often reveal the direction of the wind.

[62] It is probably difficult to translate into language a baleful atmosphere in the workplace or to provide concrete examples of what is perceived to be that atmosphere. Nonetheless it exists. The plaintiff felt it keenly. At the same time he was, perhaps understandably, sensitive to any slight due to his perception of his demotion and treatment. It is not unexpected that a person in that position might have a tendency to overestimate the extent of the atmosphere or the slight and overact to it. But that does not mean it was not real. That there was an atmosphere or a feeling of slight could not be disputed.

[63] News and Current Affairs in modern television is a dynamic environment that requires expansive, innovative and focused individuals. It is a hard edged environment and probably no place for the faint-hearted. The "glasshouse" on the defendant's site was no exception. It is an environment relished by Mr Morrison (and Mr Birnie) and others with that capacity. I doubt if it was at all times a comfortable environment for the plaintiff. His talents lay elsewhere; nonetheless he felt keenly the effects of the demotion and his treatment by Mr Morrison. He was regarded as a good programme maker or producer of certain types of programmes. However he was perceived to be less committed to those programmes or ideas in which he was not especially interested. Those assessments were probably accurate, but did not come close to Mr Birnie's uncultured view. That he was ignored or not consulted is less of a surprise in those circumstances. What is noteworthy is that no-one appears to have appreciated what was going on or understood the position from the plaintiff's point of view or how he might feel. Being too preoccupied or not interested may be explanations but they are poor excuses..

[64] Various examples of slight, perceived and real, for example the awards ceremony in London, were cited and resolutely defended. In view of my findings above they do not require to be individually examined and resolved. However I should mention a few. It was a borderline decision whether the plaintiff should attend the awards ceremony. From the plaintiff's point of view and from his previous and current position within the company he felt he should have been invited. Mr Morrison made a decision reflecting his view of the contribution made by the plaintiff and probably ignored the wider issue of the plaintiff's position and more particularly his former position. The issue was ultimately decided by Mr Bremner. The plaintiff's attitude was that Mr Bremner simply supported the manager, Mr Morrison. I think Mr Bremner is a more independent-minded than that. That the situation was not all one-sided against the plaintiff was evident from the evidence relating to his salary and annual appraisal. In all probability the plaintiff was told by Mr Morrison that the Editor's job would lead to a salary increase of a few thousand only. That might have been Mr Morrison's way of (politely) putting the plaintiff off applying for the position. While these and other issues arose

over the years the plaintiff was endeavouring to maintain a professional relationship with Mr Morrison as is evidenced by his memo of October 1997.

[65] As a result of the cancelled trip to Kosova the plaintiff owed his employer a significant sum of money. As a result of " days owed" the defendant owed the plaintiff a considerable sum of money. That the money was not repaid to the defendant was a serious issue, as would be the withholding of monies against money due. The company's attitude can best be summarised by the evidence of Mr Bremner. He stated that the defendant was entitled to expect someone of the seniority and experience of the plaintiff to appreciate that once the trip to Kosova was cancelled the money advanced should be repaid. That he did not and persisted in this view was a grave misjudgement. The contention of the plaintiff was that there was an arrangement, if not approval, to withhold one against the other in view of the similarity of the sums involved and that it would all be resolved in due course. The money owed to the company was probably due to be returned about the end of the year or the beginning of 2001. The money due for "days owed" would normally be paid following agreement. The plaintiff's "owed days" appeared to be the last from his department to be considered by Mr Morrison. However the number of "days owed" to the plaintiff was never the subject of agreement and this issue came to be considered within the disciplinary process.

[66] There was little dispute about what occurred between 8 and 20 June. Rather the issues related to what prompted the events during that period and the coincidence of the request by the plaintiff for an interview with Miss Regan about Mr Morrison and the advent of the disciplinary process and the process itself.

[67] Central to the plaintiff's case relating to this whole period was the claim that the disciplinary process was established following his request for a meeting with Mr Bremner and Miss Regan about Mr Morrison's treatment of him. Mr Bremner Miss Regan and Mr Morrison denied that the initiation of the disciplinary process was in any way related to or prompted by the plaintiff's request for a meeting. The plaintiff relied on the timing of these events and certain other features. There was little documentation with the exception of the notes of the disciplinary meetings. The defendant's case was that the withheld money became an issue in the week commencing 15 May 2000 when Mr Downey of the Accounts Department asked Mr Morrison if he had approved the withholding of the money. He said he had not and referred it to Miss Regan. Mr Bremner said Mr Morrison spoke to him about it in the same week and that the following week Mr Downey came to his office and mentioned it to him. Mr Bremner decided to become involved. For at least ten days nothing happened. Then on 6 June Mr Bremner, Mr Morrison and Miss Regan met after the daily management meeting and arranged an investigatory meeting for 8 June. There appears to have been little attempt to

contact the plaintiff that day, though Mr Morrison said he was trying to contact him, particularly later in the day. He said he phoned the plaintiff on the evening of 7 June at home and spoke to the plaintiff's wife. She said he was not at home. The plaintiff's wife denied she received such a phone call on the evening of 7 June, but phone records show there was such a call. The plaintiff was on the company premises on 7 June as he spoke to Miss Regan to request a meeting with herself and Mr Bremner about Mr Morrison. Why was Mr Morrison unable to reach him and why did Miss Regan not mention the meeting scheduled for 8 June when he spoke to her on 7 June.

[68] At 10am on 8 June Mr Morrison happened to see the plaintiff in the newsroom. He went straight over and according to him said – " meeting with Mr Bremner and Miss Regan at 12 o'clock to discuss two things, the money advance and the days owed". He described the plaintiff's reaction as one of shock. Thus the information that an investigatory meeting that had been arranged on 6 June was imparted to the plaintiff two hours before that meeting was to take place. The plaintiff said he rang Miss Regan to inquire whether this was the same meeting he had requested the day before. For some reason she was unavailable and her secretary told him it was operational matters. Thus the plaintiff had two accounts of what this meeting was about. To counter the allegation that this investigatory meeting was in response to the plaintiff's request on 7 June for a meeting with Mr Bremner and Miss Regan, Miss Regan's diary was produced, albeit late in the day. This revealed an entry on 6 June which read - "Rob/AB re MB". The page on which it was written was quite full and this entry appeared at the very top of the page and above the lines for entries. It was in different ink. It was clear from its position on the page that it was made after the event and probably after that day. Mr Bremner Mr Morrison and Miss Regan all denied resolutely that the investigatory meeting on 8 June was in response to the plaintiff's request for a meeting made on 7 June. To arrange the investigatory meeting before the plaintiff's meeting, would require that to have been done for a purpose. What might that purpose be? What advantage would it be? Perhaps it might be advantageous to Mr Morrison to deflect any later criticism of him. It would be of no known advantage to Mr Bremner or Miss Regan, unless they were anxious to protect Mr Morrison in some way at the expense of the plaintiff. There were reasons sufficient to justify an investigation at some stage. Were these events just coincidence or was this a conspiracy against the plaintiff. Such a conspiracy would require a clear objective and would involve all three personnel, Mr Bremner, Miss Regan and Mr Morrison. Mr Bremner exhibited a degree of sympathy and understanding for the plaintiff which, unless quite disingenuous, would be inconsistent with him being party to such a decision. Regardless of my views of Mr Morrison's relationship with the plaintiff and the curious events to which I have referred above, I am not persuaded that the plaintiff has established, on the balance of probabilities, that the investigatory meeting was in response to the plaintiff's request for a meeting about Mr Morrison. I do not consider that it was.

[69] I turn now to consider the disciplinary process itself. That the plaintiff withheld the money is not in dispute. The plaintiff considered he was entitled to do so and felt he had some support from the Accounts Department in what he did. Whether he had or not it was a considerable error of judgment on the part of the plaintiff to consider that he could withhold money from his employer against a claim for "days owed" that were not yet agreed. Mr Bremner's view was that the defendant company was entitled to expect better judgment from senior members of staff. I think that is a reasonable expectation. When the issue was raised with the plaintiff he persisted in his view seeking to, in Mr Bremner's words, "justify the indefensible". If the plaintiff had agreed at the outset that it was a "daft option" to have taken, then, as Mr Bremen indicated, a less formal outcome was available to the disciplinary panel. When the plaintiff persisted in his attitude Mr Bremner grew impatient. According to the plaintiff Mr Bremner shouted at him and according to Mr Bremner and the others present he raised his voice only. One man's shout is another man's raised voice. This affected the plaintiff but not sufficiently to make him realise that his view about the money withheld was not likely to prevail.

[70] During the course of this disciplinary process the issue of the number of "days owed " was raised and eventually resolved. While it was relevant in that the plaintiff sought to set one off against the other, I do not think the resolution of this issue should have been raised in the disciplinary process. As his line manager it was probably appropriate that Mr Morrison should have participated in the disciplinary process. However once the plaintiff had voiced his complaints against Mr Morrison in the second meeting on 8 June, I think the defendant should have reconsidered the composition of the disciplinary panel and replaced Mr Morrison with some other senior member of staff. Mr Morrison said that Mr Downey had asked him if he had approved the arrangement whereby the money owed was to be set off against the money due. This involved Mr Morrison in the issue to be considered and was another reason why his participation might have been reconsidered. The procedures for disciplinary matters current in June 2000 had only recently been introduced. It may have been company practice to hold investigatory meetings involving the person under investigation but the requirement for such is not evident from the formal disciplinary procedure rules. The withholding of the money was a serious issue which justified the Formal Action envisaged in paragraph 3.1. The Line Manager is responsible for initiating disciplinary action by investigation and interview. It is not apparent that this includes an interview of the person under investigation. If it did it would be interview by the Line Manager alone. It would not include an interview of the person under investigation by the Line Manager, the Human Resources Director and the Head of Programme, as occurred in this case on 8 June 2000. Paragraph 5.1 permits the management to assemble the factual material necessary. In this instance the management did assemble the facts

but denied that statements were taken. However the minutes of one of the disciplinary meetings disclose that a statement had been taken from Jack Crawford. This and any other statements that were taken were not provided to the plaintiff prior to the disciplinary interview. In addition Mr Morrison as Lime Manager did not make the plaintiff aware that action was being instigated as is required by paragraph 3.2. It was not until the end of the investigatory interview that the plaintiff was told it was an investigatory interview under the Disciplinary Rules. The fact that these procedures had just been introduced is no excuse for such failings.

[71] It would have been preferable that Mr Morrison did not participate in the formal disciplinary interview, not just because of the relationship and the fact that he was once the plaintiff's junior within the company but because the issue of the "days owed" was linked to the withholding of the money. That the issue of the "days owed" was negotiated at the end of the investigatory interview was inappropriate.

[72] In these cases involving allegations of psychiatric injury within the employment environment there is little material difference between the approach whether in contract or in tort. The plaintiff's case falls essentially into two parts - first, the manner in which the plaintiff was treated by Mr Morrison and secondly, the events between 8 and 20 June 2000. Mr O'Donoghue QC in his closing submissions argued that if the events of which the plaintiff complained about in his relationship with Mr Morison occurred, it is inconceivable that they occurred inadvertently and must have been intentional. It is a maxim well known in legal principle and logic that a man intends the natural and probable consequences of his acts. If the probable consequences of Mr Morrison's actions was to demean and ignore the plaintiff as a work colleague, then the inference that such was intended is a logical inference. That is a comparatively easier exercise when considering a specific and significant event, then when considering a limited number of small events spread over a period of years. The deterioration in their relationship was a gradual process. Mr Morrison's career was on the rise. His horizons were greater than the contributions made by the plaintiff (albeit significant) and his requirement to consider the plaintiff's position and views would have been limited. Thus a process evolved whereby the plaintiff featured little in Mr Morrison's professional life. While Mr Morrison did not set out to treat the plaintiff in this way nonetheless this was the way it developed and the plaintiff clearly felt it keenly. At the very least Mr Morrison ignored the consequences of his approach to the plaintiff and to that extent can be found to have intended them. At the same time the effect probably loomed larger in the plaintiff's mind than the reality though that is not to say it was not significant. Mr Morrison may have been thoughtless and at times ignored the plaintiff or not consulted him. It cannot be ignored that Mr Morrison was the senior person with wider responsibilities and the plaintiff was required to do what requested and expected of it. Their respective positions did not always

require such consultation or close working engagement as the plaintiff envisaged. However this relationship is characterised I do not consider that it amounted to a campaign of harassment.

[73] Throughout this period the plaintiff continued to work. He did not require to take time of work. There is no evidence that the defendant or any of the senior management were aware directly of the extent of the plaintiff's feelings and the plaintiff did not make an issue of it. Nonetheless it is clear some employees were aware and it would be surprising if this did not filter upwards within the company. The relationship between Mr Morrison and the plaintiff cannot be looked at in isolation. It must be considered against the background wherein the plaintiff was moved sideways, then demoted and told it would be better for him if he did not know the reasons why, and ultimately replaced by Mr Morrison.

[74] By May 2000 the defendant was aware that a serious matter involving the plaintiff required investigation. That involved Mr Morrison. It is clear that Mr Morrison gave the plaintiff little if any notice or warning of the investigatory meeting on 8 June or of its nature. That appears consistent with Mr Morrison's approach to the plaintiff. It is surprising that Miss Regan did not mention the investigatory meeting to the plaintiff when he called to see her on 7 June requesting a meeting with herself and Mr Bremner. The plaintiff should have been informed at the outset that it was an investigatory interview into the withholding of the money. The "days owed" were not the subject of the investigation, though they were linked. The minutes record the plaintiff being variously amazed, aghast and totally shocked. At one point he stated "there is no need to go on about it". Despite the investigatory meeting the plaintiff pressed on with the meeting to register his complaints about Mr Morrison. The plaintiff said, and it was not disputed, that Miss Regan suggested that he might prefer to leave that meeting until later. This tends to suggest that she was alive to the sensitivities of the situation and possibly the relations between the personalities involved. This would hardly be surprising as she was the Director responsible for personnel, now Human Resources.

[75] At the 5.30pm meeting on 8 June the plaintiff aired significant grievances against Mr Morrison. At that meeting it would have been apparent to Mr Bremner and Miss Regan that there existed a substantial problem in the relationship between the plaintiff and Mr Morrison, if they were not already aware of it. The plaintiff believed he had no problem with Mr Morrison but that Mr Morrison had a problem with him. The plaintiff's aide memoire for this meeting states – "personal credibility and integrity what keeps me going". The following then appears "demoralised, undermined and exhausted". There is no evidence that this caused the director of Human Resources to consider where this process was leading.

[76] The disciplinary meeting that took place at 3.30pm on 9 June began in a most unusual manner. The statement that the plaintiff had prepared was read by Mr Nesbitt. It was stated that the plaintiff had found the preceding 24 hours profoundly upsetting and emotionally exhausting. At the conclusion of the next meeting on 12 June the plaintiff stated that he was "a bit punch drunk".

[77] It was submitted by Mr O'Donoghue QC that the disciplinary proceedings were not genuine, but "a sham" in response to the plaintiff's intention to complain about Mr Morrison. To put the plaintiff through such a process deliberately for that purpose was to apply pressure to him for an underhand motive and it was entirely foreseeable that the plaintiff would suffer a mental injury as a result. As I have indicated the suggestion that is process was a sham is not borne out by the evidence. The alternative submission of Mr O'Donoghue QC was that it was entirely foreseeable that the treatment of the plaintiff by Mr Morrison and the plaintiff's demotion within the company, combined with the disciplinary process which he endured would cause the plaintiff mental breakdown. Mr Ringland QC relied on the propositions of Hale LJ (as she then was) in Hatton v Sutherland. In particular he pointed to the need in a case of psychiatric injury for indications or signs from the employee himself that he is suffering or is about to suffer stress as well as the requirement that those signs be plain enough for a reasonable employer to realise that he ought to do something about it. His principal submission however was that the evidence of the plaintiff should not be accepted on any of the material issues.

[78] The test expounded by Swanwick J in Stokes, supra, and accepted by some members of the House of Lords in Barber and by the Court of Appeal in Hartman is not as restrictive on the issue of foreseeability as that adopted by the Court of Appeal in Hatton. It requires a more proactive approach by the employer, than the reactive approach that appears to be have been adopted in Hatton.

[79] In broad terms every employer has a duty to provide is employee with a reasonably safe system of work and to protect him from risks that are reasonably foreseeable. Protection from physical harm is long established. Protection from psychiatric harm in tort or contract is a developing area of the law though no longer in its infancy. Employers are now well aware of the risks relating to psychiatric harm largely through cases of occupational stress. Distinctions between the risk of psychiatric harm and the risk of physical harm are largely self-evident and well recognised, though the circumstances in which psychiatric harm arises are expanding. Equally there are distinctions to be drawn between the demands made of employees involved in mainly administrative tasks and those who are required to be innovative and use their own initiative. Though the demands of a disciplinary process may arise infrequently, the interpersonal relationships between employees

are always present. The question that arises is when and where the employer's duty to take protective steps is manifest. Is the employer entitled to assume, based on his experience of the employee, that the employee has the capacity to absorb the ups and downs and the ebb and flow of ordinary working life. At issue in this case is not the employee's reaction to overwork but to an unusual set of events, centred on a serious error of judgment by the employee. Mr O'Donoghue QC argues that these events exposed the plaintiff to excessive stress and because stress is one of the causes of mental illness or breakdown a real risk of psychiatric injury must have been foreseeable to the defendant.

[80] That the defendant was under a duty of care towards the plaintiff is beyond doubt. Once that is established the standard of care required is that of a reasonable and prudent employer in the position of the defendant. Undoubtedly the plaintiff was under stress during this period. His employer was aware he was under stress in a disciplinary process arising from a serious error of judgment. The employer was also aware that the person under stress had been demoted and that he had a difficult relationship with his line manager, against whom he had made a series of complaints. It seems clear that no thought was given to the effect all of this might have on the plaintiff. Ought the defendant, as a prudent employer, have realised the risk of mental injury to the plaintiff, arising from this conjunction of circumstance. The defendant was unaware of the plaintiff's medical history, though I doubt that can be determinate. The plaintiff defended himself robustly, albeit misguidedly, during the interviews. At the end of one interview when discussing the date for the next interview the plaintiff was anxious that it be sooner rather than later. Mr Nesbitt detected no imminent threat to the plaintiff's mental health nor did he warn anyone that it was a possibility. To paraphrase the Swanwick J test – ought a reasonable and prudent employer taking positive thought for the safety of his employee have reasonably foreseen a risk of breakdown in the circumstances as they developed. Was there anything that should have alerted the defendant that the plaintiff was reaching breaking point or subject to a materially greater risk of mental injury? Having carefully considered all the evidence I consider it was not reasonably foreseeable to the defendant that the circumstances gave rise to such a material risk of mental breakdown. To my mind the evidence falls short of establishing that the defendant ought to have foreseen a mental injury to the plaintiff in the circumstances I have described.

[81] Therefore I have concluded that the plaintiff has failed to establish on the balance of probabilities, as he must, that the defendant was in breach of contract or negligent in the course of the plaintiffs' employment or in the events that occurred.