Judgment 19/2010 **A. J. Troalic & Sons Ltd v Kinsey – Royal Court (Civil Action File 1400) - 9 April 2010**

Employment Protection (Guernsey) Law, 1998 – finding of constructive unfair dismissal – appeal by employer – proper approach to review of Tribunal's decision – held that the Tribunal had taken account of all the circumstances and had reached a finding that was open to it – Tribunal could not be criticised for not considering a reduction in the award under s.23(2) when the point had not been raised in writing or oral argument – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1400

The 9th day of April, 2010 before John Russell Finch Esquire, Judge of the Royal Court; sitting alone

In the matter of

A.J. TROALIC & SONS LIMITED

(Appellant)

v

AARON KINSEY

(Respondent)

ON THE Appeal of the Appellant dated the 9th July 2009 from the decision of the Employment and Discrimination Tribunal handed down on the 12th June 2009, in the terms attached hereto;

WHEREAS THE COURT on the 15th day of March 2010, having heard Advocates T.A. Crawford and S.R. Geall, Counsel for the Appellant and Respondent respectively thereon, RESERVED JUDGMENT;

THE COURT this day handed down Judgment in the terms attached hereto and DISMISSED the appeal.

M A TOSTEVIN
Her Majesty's Deputy Greffier

The Employment Protection (Guernsey) Law, 1998

Notice of Appeal to the Royal Court

To the Secretary to the Tribunal
States Commerce and Employment Department
Raymond Falla House
Longue Rue
St Martin
Guernsey GY4 6HG.

A. J. Troalic & Sons Limited of Villa Andorra, Braye-du-Valle Crossroads, St Sampson, Guernsey, GY2 4RA (the "**Appellant**") being aggrieved by a decision or award of the Tribunal on a question of law given on the 12th day of June 2009 in respect of a complaint of constructive unfair dismissal made against it by Mr Aaron Kinsey (the "**Respondent**") in relation to which the Tribunal found against it and awarded the Respondent the sum of £10,920 under the Employment Protection (Guernsey) Law, 1998 (the "**Law**"), hereby gives notice of appeal against the said decision or award.

The contentions of law on which the Appellant relies in support of its appeal are set out below.

Dated this 9th day of July, 2009

Signature …….

Tom Crawford
Advocate for the Appellant
CONTENTIONS OF LAW

1. The Tribunal's decision that the Respondent was constructively unfairly dismissed on the grounds that the Appellant failed to follow a proper procedure in accordance with The Discipline at Work Advisory booklet and the Code of Practice (Disciplinary Practice and Procedures in Employment) is wrong as a matter of law because:

    (i) The Appellant's failure to follow such a procedure did not amount at law to a fundamental breach of contract entitling the Respondent to resign and complain of constructive unfair dismissal; and

    (ii) The Respondent, in any event, did not cite in his letter of resignation, or at all, the Appellant's failure to follow a proper procedure as a reason for his resignation, such that the Respondent did not resign in response to the Appellant's failure to follow a proper procedure.

2. In the event that the Tribunal also decided that the Respondent was constructively unfairly dismissed for other reasons besides the Appellant's failure to follow a proper procedure:

    (i) The Respondent cited in his letter of resignation that he resigned in response to the Appellant's "*constant verbal abuse*" and "*total lack of any form of respect*"; and

    (ii) The Respondent did not make out, and/or the Tribunal did not make findings, that there was "*constant verbal abuse*" and a "*total lack of any form of respect*"

    such that the Tribunal was wrong as a matter of law to conclude that the Respondent was constructively unfairly dismissed for reasons other than "*constant verbal abuse*" and a "*total lack of any form of respect*".

3. The Tribunal's reference at paragraph 5.3 of its decision to the "*environment of conflict between the Troalic family members and other employees*", which it used in support of its decision as to the Respondent's constructive unfair dismissal, was a reference wrongly used by the Tribunal because it had ruled during the hearing that the Respondent's evidence in this regard was not relevant to his complaint and had

ruled in consequence that it was not necessary for the Appellant to adduce evidence in explanation or rebuttal.

4. In the event that the Respondent was constructively unfairly dismissed as a matter of law notwithstanding grounds of appeal 1 to 3 above, the Tribunal:

(i) Failed to undertake a consideration under section 23(2) of the Law as to whether by reason of any circumstances it would be just and equitable to reduce the amount of the unfair dismissal award to any extent; alternatively

(ii) By failing to reduce the unfair dismissal award, undertook its consideration under section 23(2) of the Law *Wednesbury* unreasonably as it should have reduced the award to take account of:

(a) The Appellant's attempts at following a proper procedure and/or the elements of a proper procedure followed by the Appellant in addressing the Respondent's conduct and capability issues;

(b) The Respondent's contribution towards his dismissal by virtue of his conduct and capability issues that the Appellant had been addressing; and

(c) The fact that the Respondent never complained to the Appellant during the course of his employment about the issues in respect of why he resigned so that the Appellant was not made aware to address those issues.

Approved Judgment
9 April 2010

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

On Appeal from the Employment and Discrimination Tribunal

Between

A J TROALIC & SONS LIMITED **Appellant**

- and -

MR AARON KINSEY **Respondent**

Case heard on: 15th March 2010

Judgment handed down: 9th April 2010

Before: John Russell Finch, Esq., Judge of the Royal Court

Advocate for the Appellant: **T A Crawford**
Advocate for the Respondent: **S R Geall**

Legislation, Text and Cases referred to:
The Employment Protection (Guernsey) Law, 1998, as amended
Precedent in English Law – Sir Rupert Cross (Oxford) (3rd Edition)
Allonby v Accrington & Rossendale College [2001] EWCA Civ 529
Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1KB 223
Burford v Flybe Limited, Royal Court, 23rd June 2009
Milford v Seaward Marine Limited, Royal Court, 1st December 2000
Piglowska v Piglowski [1999] 3 All ER 632
Weathersfield Limited v Sargent [1999] ICR 45

Introduction

1. This is an appeal against the findings of the Employment and Discrimination Tribunal ("the Tribunal") dated 12th June 2009, concerning an application by Mr Aaron Kinsey (hereafter "R"), the Respondent in this appeal, for unfair dismissal. The provisions of the Employment Protection (Guernsey) Law, 1998, as amended apply and the appeal lies on a point of law only (Section 25(1) of the Law, as amended). The Appellants in this matter are the unsuccessful Respondents in the Tribunal Hearing, A J Troalic & Sons Limited (hereafter "A"). The Tribunal awarded R the sum of £10,920 under Section 22(1)(a) of the Law. At the appeal, R was legally represented, but was not so before the Tribunal; at the Tribunal and for the appeal, A was legally represented by the same Advocate. In advance of the appeal I was provided with a helpful joint bundle containing skeleton arguments, a consolidated copy of the legislation, the

Tribunal's decision and other materials, including Guernsey and English cases. References to page numbers are to those in this bundle.

2. The findings of fact made by the Tribunal are set out concisely at paragraph 3 of the decision (pages 34-35). When considering the facts and the evidence heard, it is apposite to note that the Tribunal, having considered all the evidence, "*prefers the evidence of the Applicant"* (i.e. Mr Kinsey). This is a finding that was open to them and which can only be overturned if perverse, no such submission has been made, so that finding stands for the purposes of this appeal. The facts found are:

    3.1 The Applicant began his employment with A J Troalic and Sons Limited on 20 February 2007. He had been employed as a motor mechanic by Mr Mark Troalic who was the workshop manager. Initially his employment was for a trial period. Mr A J Troalic, the Managing Director of the Respondent, was away in America at the time.

    3.2 The Applicant had previously been a vehicle motor mechanic and in his new role he was trained to work with motor mowers, rotavators, strimmers, hedge cutters etc. by Mr M Troalic.

    3.3 On his return from America the Respondent's Managing Director was notified of the Applicant's employment.

    3.4 The Respondent company was established many years ago and Mr A Troalic had held the position of Managing Director since 1951. The Company employs three full-time employees, two part-time employees and three family members.

    3.5 Later in 2007, the Applicant's employment was confirmed by his employer in an undated letter together with a contract of employment. The documents were signed by both parties on 30 October 2007, some four months prior to the expiry of the trial period.

    3.6 On 3 September 2008, the Applicant attended his general medical practitioner and returned later in the day with a medical certificate stating that he would be incapable of work for two weeks. The certificate was given to Mr A Troalic by the Applicant.

    3.7 The Applicant returned to work on 16 September.

    3.8 On 18 September the Respondent spoke to the Applicant about his conduct and work capability.

    3.9 At the meeting on 18 September the respondent provided the Applicant with a letter that referred to the standard of his work, giving him two weeks to improve his work or "*you will have terminated your own employment"*. No notes were made of this meeting by either party, neither was any other person present.

    3.10 After the meeting on 18 September 2008, the Applicant returned to his work duties but left later after an argument.

3.11 On 19 September 2008 the Applicant reported by telephone to Mr A Troalic that he was ill and did not attend his place of work.

3.12 On 25 September 2008 Mr A Troalic received an unsigned and undated letter addressed to the Respondent stating that he was terminating his employment with immediate effect. A copy of that letter is shown in the document bundle ER1 at tab J.

The Review of the Tribunal's Decision

3. I gratefully adopt the approach of the Deputy Bailiff in the case of *Burford v Flybe Limited* Royal Court, 23rd June 2009 (pages 157–172) at paragraphs 4 and 5. In particular it seems useful to note that the Tribunal is a lay body and its decisions are not to be construed as if they were a statute or deed. But the reasons must be sufficiently understandable to meet the standard required by Article 6 of the European Convention on Human Rights. The two paragraphs cited should be noted in full:

"**Reviewing the Tribunal's Decision**

4. In approaching a review of the Tribunal's written decision, Advocate Bell urged that I should not be over-critical or over-analytical; the Tribunal is a lay body, not a court of law and cannot be expected to draft its decisions in the same manner as an experienced, legally-qualified judge. He said the exigencies of daily life in the court room or the Tribunal are such that judgments could always be better expressed and so they should be read on the assumption that the Tribunal knew how to perform its functions and what matters to take into account, unless the contrary can be demonstrated and he cited Piglowska v Piglowski [1999] 3 All ER 632.

5. In Allonby v Accrington & Rossendale College [2001] IRLR 364 and [201] EWCA Civ 529, Sedley L.J. considered the nature and purpose of a tribunal's reasons, at paragraph 22:

> *"Before looking again at the employment tribunal's reasoning, it is necessary to remember, as this court has more than once said, that it is not appropriate to expect an analysis of every fact and argument with reasons for accepting or rejecting them (Kearney & Trecker Marwin Ltd v Varndell [1983] RLR 335. 339-340); that a tribunal's reasons are not to be construed like a statute or a deed; and that 'what matters is whether the decision under appeal was a permissible option' (Piggott Bros Ltd v Jackson [1991] 1RLR 309, 313, 312). That said, there is no point in giving reasons unless they make it possible, at the very least for parties, advisers and appellate courts to see whether the tribunal has correctly understood the law, has addressed the right questions and has reached its conclusions by permissible means (see Piggott Bros [1991] 1 RLR 309. ante. 313). Beyond this point the nature of the issues and the evidence will call for more or less in the way of explicit findings. To dilute this minimum would not only deplete the duty to give reasons and devalue the election under the*

Industrial Tribunals (Rules of Procedure) Regulations 1985, Sch 1, para. 9(3), to give full (or 'extended') rather than summary reasons; it would risk contravening s.6 of the Human Rights Act 1998 by permitting tribunals' written reasons to fall below the standard, corresponding broadly to our domestic standard, required by Article 6 of the European Convention on Human Rights (see Van de Hurk v The Netherlands [1994] 18 EHRR 481. paragraph 61; Hiro Balani v Spain [1995] 19 EHRR 566. paragraph 27)."

Grounds of Appeal and Submissions

4. These are set out in the Notice of Appeal in Tab A of the bundle, pages 1-3 and these will not be reproduced in their entirety here. The "*rationale"* for grounds 1 and 2 is found in A's skeleton at page 5, B. A submits that the Court should only consider paragraph 6 of the Tribunal's decision and the summary of that decision as displayed in the vestibule of the Royal Court. Paragraph 6 sets out that R was constructively dismissed from his employment and dismissed unfairly on the ground that there was a failure to follow a proper procedure as set out in the Code of Practice (Disciplinary Practice and Procedures in Employment). Ground 1(i) states that the failure to follow such a procedure was not in law capable of amounting to a fundamental breach of contract; Ground 1(ii) indicates that R's letter of resignation (page 236) did not cite the failure to follow procedure as a reason for resigning. Ground 2 states that in any event the Tribunal also decided R was constructively unfairly dismissed for other reasons. Ground 2(i) refers to R's letter of resignation mentioning "*constant verbal abuse"* and "*total lack of any form of respect"* and Ground 2(ii) indicates these points were not made out or found by the Tribunal. Hence it was wrong, as a matter of law to conclude that R was constructively unfairly dismissed for reasons other than those cited in his letter of resignation.

5. A notes paragraphs 5.5 and 5.6 of the decision (pages 46-47 and also set out at page 5):

> *"5.5 The Tribunal considers that any reasonable employer would have had particular regard to the health of an employee who had only just returned to work after an absence due to mental health. The Tribunal concluded that this meeting was a 'final straw' event for the Applicant who perceived that it was a further act of bullying that he could not tolerate.*
>
> *5.6 It is the duty of an employer to treat everyone with dignity and respect at work. In this case, the Respondent had a duty of care to ensure that the Applicant worked in a safe environment, which includes freedom from bullying. The Tribunal concluded that this protection was not adequately afforded to the Applicant and, as a result, there was a fundamental breach of contract on the part of the respondent. In these circumstances, the Applicant was entitled to terminate his employment without notice by reason of the Respondent's conduct."*

6. It is A's submission that the decision of the Tribunal was exhaustively and definitively set out in paragraph 6, which refers to a failure to follow proper procedures. Paragraphs 5.5 and 5.6 do not affect Grounds of Appeal 1 and 2 and are

therefore obiter (see especially paragraphs 11-16 of A's skeleton, pages 7-8). Paragraphs 5.5 and 5.6 do not form any part of the Tribunal's final decision. This, it is averred, is also supported by the summary on the first page of the decision (page 33), which sets out the findings repeating paragraphs 6.2 and 6.3 of the decision.

7. R submitted that paragraph 5 is essential to the decision and not obiter. These were not remarks made in passing on issues that the Tribunal was not required to decide. The Tribunal found that A had breached the implied term of trust and confidence. The claim for constructive dismissal was also well-founded on the basis of the finding that there had been a breach of the Code of Practice by A so that fundamental procedures to ensure natural justice for R were not followed. The totality of the decision must be looked at on appeal and the approach must not be "*overly critical or analytical"* (paragraph 12.5 of R's skeleton). The Tribunal therefore took account of all the circumstances including the failure to follow a fair disciplinary procedure to find that A had breached the implied term of trust and confidence. In addition, the failure to follow a fair disciplinary procedure was in itself capable of amounting to a breach of contract. In relation to R's letter, the principal submission on his behalf was based on the English case of *Weathersfield Limited v Sargent* [1999] ICR 45 at 217, to the effect that the fact-finding tribunal is entitled to reach its own conclusion based on acts and conduct for a person leaving employment. A suggested this case was not relevant, did not cover the point raised and R's letter clearly gave his reasons for leaving.

8. Ground of Appeal 2, as mentioned, amounts to the claim that the Tribunal was wrong as a matter of law to find that R was constructively unfairly dismissed for reasons other than those he put in his letter, viz "*constant verbal abuse"* and "*total lack of any form of respect"*. This is the unequivocal and effective reason for R's resignation and one cannot go beyond that.

9. R did not make out and the Tribunal did not find that there was "*constant verbal abuse"* or "*a total lack of any form of respect"*. There were no findings of fact to that effect. R responds that the findings of the Tribunal regarding A's conduct "*prima facie"* conform with the reasons imparted in the letter. Perhaps more significantly, it is suggested that this letter is not the only thing the Tribunal could look at and it should not be subjected, in effect, to a minute analysis. All the evidence is relevant there.

10. Ground 3 is a shorter point and refers to an alleged ruling that R's evidence in relation to an *"alleged environment of conflict between the Troalic family members and other employees"* was not relevant to his complaint and that A did not have to meet it. Hence the reference to this in paragraph 5.3 of the decision was wrong and cannot support a finding of constructive unfair dismissal. R submits that this was not a finding that underpinned the decision; the basis for the decision was bullying of R, not the purported *"environment of conflict"*. This part of the decision (and recollections differ on the ruling allegedly made, there being no recording), was separate to the primary finding.

11. Ground 4 is separate. Under Section 23(2) of the Law, an award may be reduced where it is "*just and equitable"* so to do. There is no reference to this in the decision. Even if the Tribunal did consider this and failed to make a reduction, this was Wednesbury unreasonable, as the matters listed in Grounds 4(ii)(a) to (c) of the appeal

should have been considered. Reliance here is placed on paragraphs 36, 39 and 41 of the Burford case (supra, pages 157-172). These paragraphs read:

> *"36. The legislation does not specify what is to be taken into account so, in my view, the Tribunal has a wide discretion to take account of matters that may be relevant to the dismissal; one of the factors to be considered will be whether the employee has contributed to the dismissal. Thus, previous conduct or earlier events may be relevant if they contributed to the dismissal.*
>
> *39. In my view, the failure to follow a fair process does not of itself lead to the conclusion that the compensation award cannot be reduced. Many cases of unfair dismissal will involve a failure to follow a fair process and if it was said that in all such cases the compensation award could not be reduced, that would substantially defeat the object of the legislation in conferring such a power on the Tribunal.*
>
> *41. The Appellant also argued that the Tribunal reached a decision that no reasonable Tribunal could have reached and she relied upon a number of other decisions of the Tribunal to show that a reduction of 80% is unprecedented and substantially greater than has been determined in any other case. Great care must be exercised when looking at other cases as it is not always possible to identify the particular facts of each case that may have influenced each decision. The Court of Appeal has said on many occasions, for example in criminal appeals against sentence, that appellants should only rely upon earlier cases if they lay down guidelines. There are no guideline cases on the subject of reducing compensation awards. The Appellant has failed to persuade me that in the exercise of its discretion to make a reduction of 80% the Tribunal reached a conclusion that is not only unreasonable but so unreasonable that it must be set aside on Wednesbury grounds."*

12. In response, R submits that A did not raise this point at the hearing and is estopped from advancing fresh arguments on appeal. It has never been the Tribunal's practice to positively assert that it has not decided to exercise this discretion. Furthermore, the *Burford* case presents a high hurdle to an appellant relying on *Wednesbury* unreasonableness. A also suggests that A endeavoured to follow correct procedures, spoke to R and warned him about his standard of work and that R contributed to his dismissal by misconduct and poor capability. In addition, R never complained of bullying. R responds that the Tribunal found that "*even the most fundamental procedures to ensure natural justice for the Respondent were not followed"* and repeats that on the facts, the Tribunal preferred R's evidence. R also indicated that he was fearful of the bullying and shut himself away (paragraph 4.12 of decision).

Legal Observations

13. At paragraph 3 above, I referred to the helpful observations of the learned Deputy Bailiff in the *Burford* case (supra) and cited them. It is worth considering the *Piglowska* case mentioned therein in slightly more detail. This was a matrimonial ancillary relief case which had found its way to the House of Lords from the Court of Appeal, which had reversed a Circuit Judge, who had upheld a District Judge. The

District Judge's decision was restored. Towards the conclusion of his speech, Lord Hoffman said:

> *"The exigencies of daily courtroom life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case, but also of a reserved judgment based upon notes, such as was given by the District Judge. These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters to take into account. ……. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."*

14. I have followed the Deputy Bailiff's approach as set out in paragraph 54 of his judgment:

> *"I have approached the task in accordance with the remarks of Lord Hoffman in Piglowska that I quoted above. That is to say, I have read the decision on the assumption that the Tribunal knew how to perform its functions and what matters to take into account, unless the contrary can be demonstrated. What matters is whether the Tribunal has correctly understood the law, addressed the right questions and reached its decision by permissible means (as Sedley LJ said in Allonby)."*

15. Further assistance can be derived from another Guernsey case. In *Milford v Seaward Marine Limited*, Royal Court 1st December 2000, Carey Bailiff said (at page 210-B):

> *"The issues to be considered on constructive dismissal are set out in paragraph 321 of Halsbury. It is interesting to note that the commentary says the following:*
>
> > *"Whether there has been a repudiatory breach by an employer entitling the employee to leave is essentially a question of fact for a tribunal in the circumstances of the individual case and an appellant court will rarely interfere with the tribunal's decision on the point.""*

16. Following on from these cases it was R's written and oral submission that this Court should not be over critical or over analytical and the Tribunal is a lay body. I concur in this approach so long as the caveat entered by Sedley LJ referred to above is fulfilled.

17. A submits that regard should only be had to paragraph 6 of the decision, and that the observations in paragraph 5 are obiter. R's response is that the conclusions in paragraph 5 are by their very nature, essential to the decision and this Court must look at the totality of the decision. The ratio of a case is set out by Sir Rupert Cross in his famous book "*Precedent in English Law"* as follows (at page 76):

> *"The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge, as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him….."*.

18. The paragraphs in question have already been cited above (at paragraph 5) so need not be repeated. The general heading in the decision for 5 is "*Conclusion*". I agree with the submission made on behalf of R that the entirety of the paragraph is central to the decision of the tribunal and not obiter. The tribunal did not come to its decision in a vacuum. The definition by Sir Rupert Cross, which follows a long analysis of more complex suggestions, is worthy of great respect and what was set out by the Tribunal here plainly falls into its ambit. That also has the advantage, which should not be overlooked, of being in harmony with common sense as it is generally regarded. I also consider that the approach set out on behalf of A is too artificial and formalistic. A's "*rationale"* for grounds 1 and 2 therefore fails.

19. Upon considering, as I should, the totality of the decision, I have no doubt that the Tribunal took account of all of the circumstances, including the failure to follow a fair disciplinary procedure to find A had breached the implied term of trust and confidence. This breach plainly did not rest solely upon the failure to follow procedure. As R put it in oral argument, it was "*part of the erosion"* rather than the absolute knock-out blow of the implied term. Also as the decision put it, at paragraph 5.2:

> *"The Applicant's evidence detailed a number of issues that he believed justified his resignation and were of such a nature that he could persuade the Tribunal that, on the balance of probabilities, they constituted a fundamental breach of the implied term of trust and confidence."*

20. As the Tribunal preferred R's evidence, this finding was open to it. The ***Milford*** case (supra) has been mentioned at paragraph 12 above and the finding of a repudiatory breach is essentially a matter of fact that will rarely be interfered with. I do not find any reason so to do.

21. The reading put forward by A of R's letter of resignation also seems to me to fall into the trap of narrow formalism, better suited to the construing of a penal statute. It is for the Tribunal to come to its decision based on the totality of the evidence. Each case will turn on its own facts. The ***Weathersfield*** case (supra) is consistent with such an approach. The letter simply forms part of the evidence upon which the Tribunal made a decision, it is not to be dissected forensically. There is nothing inconsistent in the letter with the Tribunal's decision, having preferred R's evidence.

22. In relation to Ground 3, there is a difference of recollection between the parties, and, as stated, no recording. The conflict between the Troalic family members and other employees was not found to be a breach of the implied term, it was the bullying of R which formed the basis of the decision. Accordingly this was, whatever was decided at the hearing, not a basis of the decision. If paragraph 5.3 is read as a whole, the significant aspect is that, on the facts, it was accepted R was "*subjected to bullying and harassment which, in his own evidence, he said he tried to ignore until the summer of 2008"*. The conflict point is a backdrop to this.

23. Whilst I am not entirely sure that the technical word "*estoppel"* applies in the circumstances, I am unable to see how A can argue a reduction under Section 23(2) of the law when the point was not raised in writing or oral argument. Nor does it seem to me unreasonable for the Tribunal in such circumstances not to positively assert that it is not making a reduction when it has never been suggested. How could a Magistrates' Court be criticized properly for not dismissing a defence, say, of

automatism or duress if not raised at the hearing? This is an imperfect analogy, but to hold otherwise would place an insufferable burden on the Tribunal. If I am technically wrong on this point then I accept Wednesbury principles would apply and on this basis, and the finding of facts, would not consider any reduction appropriate.

24. Looking at the decision from start to finish, it is not open to valid criticism. The facts are set out extensively and clearly, the legal principles are properly expressed and the decision is perfectly comprehensible to both the interested parties and anyone else who looks at it. In my judgment, on the evidence, the conclusions were entirely open to the Tribunal to arrive at, exercising its powers judicially, and the attempted impeachment of the decision is a barren exercise.

Decision

25. The appeal is therefore dismissed.