

Employment Tribunal

EMP TRI 33 of 2024

Between:-

Aaron Perales

Claimant

v

Manchester 62 FC Limited

Respondent

Decision

Background

1. On the 15th November 2024, the Claimant filed with the Tribunal a Claim Form to which there was annexed three pages setting out details of the claim. In the Claim Form the Claimant claimed for unfair dismissal and, alternatively, wrongful dismissal arising from the Employer's breach of his employment contract and sought reinstatement as a strength and conditioning coach and compensation. Since the Claim Form was filed counsel for the Claimant has confirmed that reinstatement was no longer being sought.
2. On the 7th February 2025, the Respondent filed a Response to which there was attached four pages setting out the basis upon which the Respondent was defending the Claim filed.
3. On the 9th October 2025, I was appointed as the Chairperson to determine this case.
4. On the 19th November 2025, the first case management hearing took place. The Claimant was represented by Mr Paul Grant, who has represented the Claimant throughout this case, and the Respondent was represented by Ms Melanie Mackenzie, an employee of the Respondent. Orders for disclosure and exchange of witness statements were made.
5. On the 19th February 2026, the second case management hearing took place, this time the Respondent being represented by video call by Michael Monsour, the owner of the Respondent. Orders for exchange of witness statements and the filing of an agreed chronology of events was made. The 25 March 2026 was set down for the holding of the next case management hearing.
6. On the 25th March 2026, the Respondent failed to appear despite efforts made to contact the Respondent, and the Claimant applied for an Unless Order as the Respondent had failed to comply with the Orders made on the 19th November 2025 and 19th February 2026 respectively. I reserved my decision.
7. On the 26th March 2026, I issued my decision and made various orders including that if the Respondent failed to file signed and properly formatted written witness statements by the 17th April 2026 it be prevented thereafter from calling and/or relying on witness statements at the hearing unless the Tribunal otherwise ordered; the Respondent nevertheless being able to participate in the hearing of the claim, which was set down for the

29th June 2026; which date was subsequently pushed back. The Respondent failed to comply with the order made.

8. On the 24th August 2026, the hearing of this Claim finally took place. The Respondent failing to appear and/or be represented notwithstanding that it was aware of the date of the hearing.

9. The hearing took place over the course of the 24th and 25th August 2026. The Claimant gave evidence and the witness statement of Kanyl Hamond produced but she did not appear before me to tender the witness statement or give evidence and therefore little weight can be attached to its contents.

10. Before me at the hearing I also had the following documentation which had been forwarded to the Tribunal on the 6th March 2026; namely:-

- (a) an undated (but it can be reasonably implied the document was produced sometime around September 2024) signed document purportedly made by Mr James McDonough, which appeared to have been sent by e-mail by him to the Respondent and which, because of the way its contents are set out, it appears that some portions of the e-mail have been copied from another unknown document;
- (b) an e-mail in which there was an unsigned statement made on the 6th March 2026 by Mr Michael Monsour; and;
- (c) a three-page typed written narration apparently written by the Claimant himself sometime in 2024 which the Respondent had in its possession.

To such extent as the contents of this documentation is relevant to the matters before me, very little, if any, weight can be given to them, unless any facts therein are corroborated by other evidence.

Chronology of Events

11. On the 1st August 2023, the Claimant and the Respondent entered into a fixed two-year contract whereby the Claimant was as from the 23rd July 2023 employed as a strength and conditioning coach at the monthly salary of £1,500. As to the relevant terms and conditions of this contract more later on.

12. At the time the Claimant was employed, the head coach of the Respondent was a Mr Anthony Limbrick, who left employment in or around November 2023, and was replaced by Mr Alan Bula for a very short time. In November 2023, Mr James McDonough became the new head coach, a position he retained throughout the period the Claimant was employed by the Club.

13. It is clear, and not denied by the Respondent, that throughout the period the Claimant was employed with the Respondent, the Respondent had financial difficulties which became especially acute between February to April 2024. Employees of the Respondent, including players and officials, where not paid on time or at all for prolonged periods of time thereby putting everyone concerned under financial pressures; the extent of the financial pressures on individuals, and indeed the club, cannot be underestimated. This was no secret within or outside of the Respondent.

14. The evidence given, and which I accept, is that Mr Monsour, the owner of the Respondent, was hardly ever present in Gibraltar and that the club was effectively being run by Mr Sean Cruz, the club secretary, Mr Randal Aldorino, the club match delegate and the head coach, firstly Mr Limbrick

and then Mr McDonough. This is important to note in the context of what the Respondent was aware of and what it was consenting to.

15. The Claimant was approached by Mr Sean Cruz, who was or had been a client of the Active Sports Clinic, and who personally had known the Claimant for years, and asked whether he was interested in becoming the Respondent's strength and conditioning coach. At this time, and indeed to date, the Claimant is the owner of the business known as Active Sports Clinic. The clinic treats individuals, whether in or outside the general sporting community, including players and officials from all football clubs. The Respondent was fully aware of the Claimant's business at the time the contract of employment of the 1st August 2023 was signed.

16. The Claimant received his first salary late and the position only worsened as the season progressed. The October salary was received at the end of November 2023, no salary was paid between February to April 2024 and the June 2024 salary was never paid.

17. On the 12th November 2023, the following whatsapp exchange occurred between Mr McDonough and the Claimant:-

"McDonough – They turning up. I don't know if they will train.

Perales – I'm working tomorrow. Can't be arsed to cancel patients any longer until things get sorted and they stop treating us like idiots.

Perales – Hopefully I'll be there Tuesday.

McDonough – Yeah Anthony said and I completely get that. You have to take care of your main income stream.

Perales – Absolutely, I need to pay over £500 in rent, which I can't if I don't see patients and I don't get paid by the club.

Perales – Anthony says you're planning session tomorrow?

Perales – What do you need me to do.

McDonough – I genuinely don't know right now".

18. On the 14th December 2023, the following whatsapp exchange between the Claimant and Mr McDonough occurred:-

"Perales – You taking the team tomorrow.

McDonough – I've been told that players and staff will be paid very imminently. As soon as it happens you are the first person on my call list. You available tonight.

Perales – A available for?

McDonough – A call sorry.

Perales – Yes, I am.

McDonough – Cool. I'm hearing a couple have been paid.

Perales – Yes some.

Perales – It's a mess.

Perales – We haven't trained once this week.

McDonough – Its far less of one when they have been paid".

19. On the 24th January 2024 Mr McDonough circulated this whatsapp message:-

"Training time has changed to 20.15 today.

Please can you let me know if you will be there or not?

There is no pressure from me. I am doing this for the players who have called me and told me they want to train. I am also doing it for the players who are worried about their contracts.

If you want to discuss the situation as well, please do talk to me. I don't have answers, and right now I do not have any ideas of what we can do with the full support of everybody".

20. On the 16th February 2024, at the end of a whatsapp exchange between Mr McDonough and the Claimant, Mr McDonough states:-

“Yeah. I’m on the phone to Michael now. The agent has said he can play as long as it’s a strain and not a tear”.

21. According to the Claimant in January/February 2024 he had a conversation with Mr McDonough during which Mr McDonough confirmed there was no objection to the Claimant providing physiotherapist services to other clubs provided it did not interfere with the Claimant’s ability to perform his services to the Respondent.

22. On the 18th February 2024, the Claimant informed Mr McDonough that he intended to provide what is termed pitch side cover (ie act as a physiotherapist) for Glacis United F. C in a premier division match they had against Europa F. C. No objection to this was raised by Mr McDonough, who in a whatsapp message to the Claimant whilst the match was being played, told him *“don’t get sent off”*.

23. On the 1st March 2024, Mr Monsour issued a statement to employees:-

“We are working to finalize agreements with new investors and donors for the club. We apologise for the delay, there is still chance funds will be deposited by tonight covering the last two payments owed but we will not have confirmation until 4 pm Est 10 pm Gib time”.

“As I was planning to be there for Sundays match, I have chosen to stay back to ensure this transfer goes through if not today then Monday evening. I will be returning once that transfer is complete”.

24. It is clear to me from the frequency and content of the whatsapp messages that were exchanged between the Claimant and Mr McDonough that until the end of May/beginning of June 2024 there was a banter between them that appeared to be more than just business like. After the first week of June 2024, the frequency of exchanges is less, the tone frostier and there seems to be an element of mistrust in the air. In evidence the Claimant confirmed that the relationship between Mr McDonough and himself had been good until the end of May 2024 but that for some reason he was unaware of why things changed as from the beginning of June and quickly deteriorated after this. However, this may not be an accurate picture because an exchange between both individuals on whatsapp that occurred on the 15th June 2024 suggests something else hid under the surface:-

“McDonough – And my reasoning is working out. I’ve literally just

had a conversation with a player who had been told some bullshit and I knew exactly where it came from because I know exactly who knows what. It’s not trust. It’s a professional process.

– Ok, but the fact that you don’t trust your technical staff with confidential info says a lot but believe me I have no interest in knowing anything until the day we get back to training.

McDonough – Aaron it’s getting silly now. You’ve been on my case for about 6 months. Do you want to work with me or not?

I don’t expect you to agree with everything that comes out of my mouth. That’s the last thing I would ever want

Perales – I have a year contract left. It is upto you if you want me working or not, you’re the boss
and

“McDonough – No. There was a difference legally between the statement you made telling Michael your opinion, and the sharing of private conversations. Yours had no impact on your financial contract with the club. It is not misconduct, it is providing a statement of something you’ve seen, and giving opinion on something.
Me sending you private conversations would be gross misconduct
If they didn’t want you working, they would still have to pay you! And this is the needle isn’t it. It bothers you. I hope you can see the difference, but if you can’t then I can’t control that. I can’t prove it would be the same the other way round”.

and

“McDonough – I genuinely think there’s a level of resentment here that isn’t all focused on me but is being brought up against me. Let’s work together! Let’s go and fucking win! You know I’ll give you the decisions that are relevant to your job”.

and

“Perales – And being totally honest I have not felt 100% valued this past 10/12 months. But rest assured I’ll do my job to the best of my abilities nonetheless.
McDonough – OK so simple question – why do you not feel valued? How do I make you feel valued?
Perales – Just felt this past season that everything I’ve suggested has not been given much consideration perhaps it’s my perception”.

25. On the 20th April 2024, the Claimant acted as physiotherapist for St Josephs in a premier league match against Mons Calpe. There is no indication that the Claimant asked for the Club’s permission before he conducted the service.

26. On the 29th June 2024, the following whatsapp exchange between Mr McDonough and the Claimant gives an indication about how Mr McDonough at that time viewed the question of the Claimant providing physiotherapist services to other clubs:-

“Perales – There’s only one problem with Schedule. I’m meant to be away 9 – 12th with St Josephs. I was under the impression that we could not start that week due to players not being back then.
McDonough – There is absolutely no way I’m getting you going to Europe with St Joseph’s past the Board. (Two smiley faces). No chance. So don’t know what you want to do about that!
Perales – You implied that we weren’t starting that early hence why agreed with St Joseph’s. It’s worth with Guerra. He is going away the following week.
McDonough – Guerra had agreement with club. Have you spoken to the club?
Perales – Nope, who do I speak to?
McDonough – Sean/Randal and they’ll send you to Michael, I guess.
Perales – Ok I’ll message them.

- Perales – Randal says he has no issues. I told him I can cover Guerra the week he's away. I can leave all work to be done. If there's any issues let me know as I would need to make a decision".*

On the 29th June 2024, The Claimant also had this whatsapp exchange with Mr Cruz:-

- "Perales – St Joseph's have asked me to travel to Ireland as physio for their away game. I hope this is ok with Manchester. Been told inform you and Randall.*
Cruz – Let me talk to Randall and Michael.
Perales – Already sorted it out with Jamie.
Cruz – Okies."

These exchanges should have put the Claimant on notice about seeking permission to provide services to another club, it suggests that there is some kind of agreement between Guerra and the club about provision of pitch side cover, it illustrates that the persons to seek consent from are Messrs Cruz/Randal and not Mr McDonough, and lastly that the Claimant purportedly did get the permission of Mr Randal to his going away with St Joseph's.

27. On the 11th and 18th July 2024, the Claimant acted as physiotherapist for St Joseph's in a UEFA Conference League fixture against Shelbourne FC. There is no indication the Claimant asked for permission from the Club or indeed that the Club knew or objected to it.

28. On the 14th July 2024 the following short exchange of whatsapp between Mr McDonough and the Claimant is instructive:-

- "McDonough – Well, no they'll have to pay now. Your contract will also have a clause in it as well saying you can't work for other clubs.*
Perales – My contract also doesn't say I wouldn't get paid month of June btf I haven't even read it".

29. At some stage in the season, on dates unknown, the Claimant acted as physiotherapist for Lions FC on two occasions in premier league matches. There is no suggestion that in either occasion the Claimant asked permission from the club to conduct the services or that the Club objected to his providing such a service to Lions FC, if indeed they knew about it.

30. On the 19th July 2024, the following exchange on whatsapp between the Claimant and Mr McDonough indicates an increasing tension between them:-

- "Perales – I'm doing my job aren't I? If there's anything you feel I'm not doing just say and I'll do.*
McDonough – I just have.
Perales – Noted.
McDonough – I'm asking if you're comfortable with the possession being 4v4+2 directional or not? The rest of it – we need to get onside here. I love your knowledge and I want to work with you. But I can't keep dealing with the attitude which is negative towards anything and everything. We're all in or we're not in.
Perales – I'm paid to do a job, suggest what's best, and ultimately do whatever you feel is best. Whether I'm comfortable with certain things is irrelevant. And I agree about attitude and apologise".

31. A whatsapp exchange between the Claimant and Mr McDonough on the 31st July 2024 refers to Mr Guerra, the Club physio being away from Gibraltar with another Club to the detriment of the Club as it was going to have to send a player to a physio in Sotogrande. A whatsapp exchange between the Claimant and Mr Cruz on the same day refers to Mr Cruz having given “*Guerra permission to go con Bruno’s to Europe*”.

32. On the 31st July in a whatsapp exchange between Mr Cruz and the Claimant Mr Cruz confirmed that “*it the first time I think I’ve seen*” the Claimant contract.

33. Late on the 9th August 2024, the Claimant sent a whatsapp message to Mr McDonough which kicked off an extensive baring of the soul whatsapp exchange on the 10th August 2024, which in turn led to Mr McDonough making some form of formal report to the Board of Directors of the Club. What exactly was said by Mr McDonough or reported by him to the Board of Directors is not known. It is to be noted that the Claimant did not himself make any complaint against Mr McDonough to the Board of Directors. The contents of the whatsapp exchange between the two men was as follows:-

“09/08/2024, 23:04 – Aaron Perales: hi mate, do you have any issues with me?”

10/08/2024, 08:31 – Jamie McDonough Man62: Not personally. I have some issues with how you’re going about your job but that’s not to be discussed on a phone.

10/08/2024, 09:39 – Aaron Perales: Happy to discuss these things. Just feel I’m not allowed to do my job properly.

10/08/2024, 12:11 – Aaron Perales: I suggest that we meet before our next session if things are going to move forward in the right direction. I want to bring to your attention some feelings I’ve been struggling with for some time, and which should not get you by surprise as I have discussed these with you not long ago. Recently, I’ve felt undervalued and disrespected in my role. Despite my qualifications and commitment, I’m not being given the opportunity to fully perform my duties. I’ve noticed that many of my suggestions are either overlooked or the opposite course of action is taken. In the past I have given you clear examples of these instances.

This situation has been taking a toll on my self-esteem and mental health, as I feel I’m not being supported in a way that allows me to contribute effectively. Recently I have even been ignored, with my messages not even being answered. I accept that you may be used to doing everything in the previous roles you’ve had, and maybe not had a technical team to work with, and also accept that if you would rather do the job of strength and conditioning coach then that’s totally fine. I just want to know what you want my role to be within the team and move on from there. I think that my professionalism and commitment to the club during last season and this cannot be questioned the slightest. I have gone beyond my job duties to help the team, players and even yourself in anything I could, but you must understand that someone like me with my extensive experience, would feel aggrieved or not allowed to fulfil my role or questioned at every minute. I understand that you are the ultimate boss, but you also need to accept that the club employs professionals like me, which find frustrating when our advice and recommendations are gone against without any logical reasoning. This will only be detrimental to the Club and the team’s success.

I’d be happy to meet any time that suits you, preferably in the presence of someone from the board or coaching staff.

11/08/2024, 08:06 – Jamie McDonough Mn62: Hi Aaron, I’ve referred this message on to the clubs board of directors.

Due to the importance of some of the information contained, specifically relating to your mental health, I feel it is important to ensure that the conversation becomes formal”.

34. On the 12th August 2024, the Club issued the Claimant with a letter notifying him that he was being placed on gardening leave for a week effective that same day whilst the Club continued an “ongoing investigation”. It is to be noted that the letter did not specify what was being investigated or how such an investigation related to the Claimant. It is to be further noted that Mr McDonough was not issued with a similar letter and that there is no indication that the Claimant attempted to ascertain from the Club what he was being investigated in respect of. The assumption was made that the matter of investigation concerned/related to the whatsapp exchange of the 10th August 2024 between the Claimant and Mr McDonough.

35. On the 16th August 2024, the Claimant sends Mr Cruz a whatsapp message with reference the Club’s possible appointment of a Mr Luis McCoy as strength and conditioning coach. The exchange is as follows:-

“Perales – Just been speaking to one of the players who has told me that Jamie introduced Luis McCoy to the squad as assistant manager, and s & c coach, which was meant to be my position.
Perales – It’s now evident what he was doing all along.
Cruz – seriously.
Perales – apparently.
Cruz – Manda huevo let me talk to Mel.
Perales – Estaba claro what he’s been doing. As soon as they must have confirmed McCoy cambio drastically.
Cruz – Let me talk to Mel porque this weeks been de loco loco.
Perales – Tranquilo, I told her that I’m happy to meet up including Jamie, and talk things through everyone together”.

It would appear that Mr Cruz, or indeed anyone else within the Club, never reverted back to the Claimant on the issue of whether Mr McCoy had been appointed as the strength and conditioning coach as at the 16th August 2024. The Claimant for obvious reasons places much emphasis on this event.

36. On the 17th August 2024, a premier league match took place between Europa Point FC v Glacis United FC. The Claimant as the owner of Active Sports Medicine Clinic took part in that match as the physiotherapist to Glacis United FC. Active Sports Medicine Clinic was according to Mr Berand Brinkman, the owner of Glacis United FC, asked to provide this service and the Claimant was not remunerated for the service. The Claimant did not inform the Club about his intended participation in this fixture or indeed seek to obtain the Club’s consent to such participation but similarly the Claimant did not in any way seek to hide from the Club his said participation as a physiotherapist.

37. On the 19th August 2024, Mr Cruz sent the Claimant a whatsapp message stating “Aaron can we have a call tonight at around 8/9? Mel and myself”. There was sometime between 20.53 hrs and 21.52 hrs that same day a telephone conversation between Mr Cruz, Melanie Mackenzie and the Claimant but there is no verbatim record of what exactly was stated in the course of that conversation or by whom. The general context of the conversation was in relation to the Claimant having attended the 17th August 2024 match as a physiotherapist for Glacis United FC without having first sought the Club’s permission.

38. On the 20th August 2024, the Claimant started the following whatsapp exchange with Mr Cruz at 14.42 hrs:-

“Perales – I just feel I am being treated in a way I don’t deserve. Last night I couldn’t sleep, overthinking everything that has happened. I’ve had a really bad last few weeks with the ghosting subjected by Jamie, and didn’t have my head in the right place. I probably didn’t even think twice about any consequences of covering the Glacis game.
Cruz – As mentioned last night Jamie issue would have been sorted, but we were advised of this new investigation.
Perales – I understand this, but I’m also convinced that it will be much more than as warning, which is perfect if what the object was to get rid of me.
Cruz – The result of the investigation can be appealed as stated on your contract. The investigation will give its verdict based on the facts produced and then you can or not appeal it”.

39. At some point between 14.48 hrs and 16.55 hrs on the 20th August 2024, the Claimant received two letters from the Club by e-mail; namely:-

(a) in the first letter the Club informed the Claimant that “*following our investigation into your concern dated 12th August 2024 regarding the lack of communication and issues with the Club’s Senior Head Coach please be assured that this matter has been addressed and will be rectified going forwards your gardening leave is now terminated and you are expected to return to work*”. The reference to the 12th August would appear to be a date error since the relevant whatsapp exchange took place on the 10th August 2024;

(b) in the second letter the Club informed the Claimant that it had come to the Club’s attention that the Claimant was “*working for Glacis FC as their Club Physio during their game on 17th August 2024 (refer to Comet sheet)*” and that this constituted “*a violation of Section 3 (3.1.5 and 3.2.3) of your contract*” and that due “*to the seriousness of this breach, which is considered Gross Misconduct*” the Claimants contract was being terminated “*in accordance with Section 10.1.1*”. The letter further pointed out that the Claimant had not been given permission to act as physio for Glacis United FC and that it would have been denied had such permission been requested since the provision of such a service was “*a clear conflict of interest, given that you were serving on the bench for a competition in which Manchester 62 is also competing*”.

40. In a whatsapp message on the evening of the 20th August 2024, Mr Cruz confirmed that the disciplinary board had been composed of Ms Mackenzie and himself. It is also evident from whatsapp exchanges that the disciplinary board, apart from the comet sheet, also viewed a video of the Glacis fixture.

41. On the 23rd August 2024, Mr Louis McCoy served on the bench for the Respondent in a fixture between the Respondent and FCB Magpies. According to the comet sheet produced Mr McCoy was present as “*physical trainer*”.

42. On the 3rd September 2024, the Claimant appealed against the disciplinary board’s decision to terminate his contract. As a result of this the Club set

up an appeal board comprised of Ms Arcelia Hernandez Cordero, Mr Randal Aldorino and Mr Philip Hernida.

43. The appeal was heard on the 25th September 2024. Apart from the Appeal Board members, the Claimant and his friend Darren Celecia was present but, according to the Claimant, no one from the Club was present or took part in the hearing. The appeal decision issued on the 6th November 2024 does not state or indicate either who comprised the Appeal Board (other than Ms Hernandez Cordero) or who took part in the hearing.

44. On the 6th November 2024, the Appeal Board issued its decision in an eleven-page judgement. The Appeal Board concluded that the Club's decision to terminate the Claimant's contract was "*justified and supported by evidence*" and dismissed the appeal.

The Employment Contract

45. The document is on the cover page dated the 1st August 2023, but on the first page it states that the contract is dated the 23rd July 2023. The contract is between "Manchester 62 FC" (therein referred to as "the Club") and the Claimant (therein referred to as "Strength and Conditioning Coach") (hereinafter referred to as "the Contract"). The copy of the Contract produced to the Tribunal shows that it has been signed by the Club only but in his evidence the Claimant confirmed that he had signed a copy and given it to Mr Sean Cruz. The relevant provisions of the Contract for the purposes of this claim are the following:-

"Club Rules shall mean the rules or regulations affecting the Strength and Conditioning Coach from time to time in force and published by the Club".

I pause to point out that no evidence was given or produced to indicate that any such rules/regulations were ever issued by the Club during the Claimant's employment.

"Gross Misconduct shall mean serious or persistent conduct behaviour activity or omission by the Strength and Conditioning Coach involving one or more of the following:-

- (a) theft or fraud;*
- (b) deliberate and serious damage to the Club's property;*
- (c) use or possession for or trafficking in a Prohibited Substance;*
- (d) incapacity through alcohol affecting the Strength and Conditioning Coach's performance;*
- (e) breach or failure to comply with any of the terms of this contract or such other similar or equivalent serious or persistent conduct behaviour activity or omission by the Strength and Conditioning Coach which the Board reasonably considers to amount to gross misconduct".*

The Respondents case is that the Claimant committed Gross Misconduct by breach of the terms of his contract.

I pause here to consider what the authorities have held with regard to gross misconduct. In the case of *Neary v Dean of Westminster* (1999) IRLR 288 the court of appeal held that the conduct amounting to gross misconduct justifying dismissal must undermine the trust and confidence inherent in the particular employment contract to such an extent that the employer should no longer be required to retain the employee. The question is fact sensitive.

In the case of *Pepper v Webb* (1969) IWLIR 514 the Court of Appeal held that conduct justifying instant dismissal must amount to an express or implied repudiation of a fundamental term of the employment contract; ie is the

employee's conduct sufficiently incompatible with the continuation of the employment relationship in all the circumstances of the case, including the nature of the employment.

“Strength and Conditioning Coach shall mean the official of the Club responsible for working under the head coach to develop analytic reports in relation to the head coach's objectives regarding player performance in relation to training, match play and scouting”.

In the context of this case this definition is important to bear in mind as it serves to illustrate the different duties a strength and conditioning coach has when compared to a physiotherapist as well as setting out what the Claimant's duties and obligations were.

Clause 3:-

“3.1 The Strength and Conditioning Coach agrees:-

3.1.5 to coach and manage football solely for the Club or as authorised by the Club or as required by the Rules.”

A strict interpretation of sub-clause 3.1.5 is that the Claimant could not “*coach and manage football*” for a third party unless authorised by the Club. The Club however interpreted this provision in a much wider fashion. It is to be noted that the duties of a physiotherapist cannot by any stretch of the imagination amount to coaching or managing another club. But this is in essence what the Club has alleged against the Claimant since it is this clause which the Respondent alleges was breached by the Claimant on the 17th August 2024 when he attended a match as the assigned physiotherapist for Glacis United FC. This is not a point that was considered by the chair of the Appeal Board.

“3.2 The Strength and Conditioning Coach agrees that he shall not:-

3.2.3 undertake or be engaged in any other employment or be engaged or involved in any trade business or occupation or participate professionally in any other sporting or athletic activity without the prior written consent of the Club”

This is the other provision relied upon by the Respondent when determining that there had been a breach of the contract. The point to note here is that strictly interpreted this clause was breached from the moment the contract was signed since the Respondent was fully aware the Claimant ran a sports clinic under the business name of Active Sports Clinic and treated players and officials of the local sporting community, including those of other football clubs.

“Throughout this engagement the Club shall pay to the Strength and Conditioning Coach remuneration and shall provide the benefits as are set out in Schedule 2”.

It is pertinent to note that this clause, and indeed no other in the Contract, makes any differentiation whatsoever between the “*on*” and “*off*” football season; his salary was payable for each month during which the Contract continued in force.

“10.1 The Club shall be entitled to terminate the employment, of the Strength and Conditioning Coach by fourteen days’ notice in writing to the Strength and Conditioning Coach if he:-

10.1.1 shall be guilty of Gross Misconduct”.

It is abundantly clear from the documentation produced, let alone the evidence given by the Claimant, that the Respondent breached this clause as no fourteen days’ notice of termination was given.

*“10.4 If the Strength and Conditioning Coach exercises his right of appeal the termination of this contract by the Club shall not be effective unless and until it shall have been determined that the Club was entitled to terminate this contract pursuant to clause 10.1
.....”*

Bearing in mind that the Claimant was dismissed by the letter dated 20th August 2024, that he appealed the decision and that the appeal decision was issued on the 6th November 2024, it is clear that the Respondent was in breach of this clause. Here again this appears to be a matter not taken into account by the Appeal Board.

46. In my opinion the Contract was badly drafted, perhaps because a template document was used, but such bad drafting should not be interpreted against the Claimant on the basis that what was intended by the Respondent was something else.

The Appeal Decision

47. The Appeal Decision issued on the 6th November 2024 does not state who formed part of the Appeal Board or whether the decision reached was unanimous or otherwise and unfortunately, in my view, was printed on the letterhead and with the logo's of a local law firm. There are however to my mind more fundamental areas of concern with respect to the appeal decision.

48. Firstly, it appears to me that either insufficient consideration was given by the Appeal Board to the disciplinary process followed by the Club or the Appeal Board were under a misconception as to the events that had taken place. At paragraph 6 of the Appeal Decision, it is stated that “*on the 19th August 2024, the first disciplinary hearing was held*”. It is difficult to understand how a telephone conversation between three people held at around 9 pm for an unknown but not lengthy period of time when the Claimant had not been given prior notification of the reason for the call can be designated to be a disciplinary hearing. There was no second disciplinary hearing so the use of the word “first” is strange. Moreover, it has to be questionable as whether during such a telephone call the Claimant would have been told, as is stated in paragraph 7 of the decision, that his provision of a service to Glacis United FC was “*a serious breach of contract, more specifically Clause 3.1.5 and 3.2.3*” and that his contract was being terminated pursuant to clause 10.1.1. Apart from the point that it sounds implausible that either Mr Cruz or Ms Mackenzie would use such legalistic language in a telephone conversation, it is clear from the whatsapp exchange between Mr Cruz and the Claimant of a day later that no decision to terminate was notified to the Claimant until sometime on the 20th August.

49. Secondly, it appears to me that the Appeal Board failed to give proper consideration to the terms and conditions of the Claimant's contract and failed to take into account the Club's own breaches of said contract. The Appeal decision, at paragraph 18.1.3, refers to it not being clear whether for the purposes of clause 3.2.3 of the contract consent to provide a service to a third party is required on each occasion the service is provided and then goes on to place special importance on whether consent can transcend from one season to another. The terms and conditions of the Claimant's contract make no reference to, let alone make a differentiation between, “*on*” and “*off*” season or indeed between seasons. The Claimant is either in breach of his contract or not, irrespective of when during the course of the contract the breach occurs. Similarly, if there is consent, it is not only irrelevant at what point that consent is given but also as to whether such consent can expressly/impliedly be said to cover the duration of the contract. The issue of consent boils down to the wording of Clause 3.2.3 of

the Contract, and essentially as to whether the Claimant had prior written consent of the Club to “*participate professionally in any other sporting or athletic activity*”. If he did not have prior written consent, and if the activity, in question can be said to amount to participating professionally in a sporting or athletic activity then the issue of gross misconduct arises.

50. Similarly, the Appeal Board failed to adequately take account of the wording of Clause 3.1.5 of the Claimants contract since no consideration was given as to whether the provision of physiotherapy services could be said to amount to coaching or managing Glacis United FC on the 17th August 2024; this after all being what is required by the clause in question. If it cannot be said to be coaching or managing then clause 3.2.5 does not come into play and it cannot be gross misconduct.

51. Moreover, when considering the definition of gross misconduct set out in the Contract the Appeal Board appears to have interpreted the wording as permitting any (no matter how small) non-compliance of the terms of the contract to be classified as gross misconduct. In my view this is far too broad an interpretation of the clause; the breach or failure has to be equivalent in seriousness to theft or fraud, or causing deliberate and serious damage to club property, or to the use or possession or trafficking of illicit drugs or to incapacity through alcohol. Such an interpretation would be in line with case authorities on the subject. The question which the Appeal Board failed to properly consider, was whether the provision of the physiotherapist services on the 17th August 2024 was a sufficiently serious breach of the Claimant’s contract as to amount to a repudiation of the employment contract, and whether the disciplinary board was “*reasonably*” able to consider it as such. Much has been made by the Respondent that the provision of the physiotherapy services to Glacis United was a conflict of interest because the Respondent and Glacis United FC played in the same league. It is difficult for me to understand how the provision of physiotherapy services in one match, at the very beginning of the season, could actually or potentially influence the result of the match in question or the eventual respective clubs’ league position and/or cause some loss or detriment to the Club and/or its league position thereby raising a potential conflict of interest situation. Whilst the conflict-of-interest statement has been made it has never been fully explained as to how or in what respect such a conflict arises.

52. Thirdly, the Appeal Board appears to have only given lip service to the question of whether a lesser disciplinary measure than termination of contract should have been imposed on the Claimant. Schedule 1 Part 1, paragraph 4.1.4 of the Contract specifically provides that in any circumstances that would entitle the Club to dismiss it can instead impose other disciplinary action including suspension or a fine. Notwithstanding this, the Appeal Board concluded, for a reason that I fail to comprehend, that imposing a lesser penalty “*would entail, given the position of the parties, revisiting the terms and conditions of the Contract*”. Why and how this would arise was not explained. And in any event had the Respondent’s own prior breaches of the Contract not already changed the playing field?

53. Fourthly, there are various references in the Appeal Decision to the phrase “*we are told*”, presumably by someone on behalf of the Respondent, that this or that was said or occurred; no identification of who said this being given. Bearing in mind that according to the Claimant no one from the Respondent (other than the persons on the Board) was present at the hearing, the question arises as to whether the Appeal Board had spoken to Club officials outside of the presence of the Claimant or the confines of the appeal hearing and, if so, how this affected the outcome of the hearing. At paragraph 9 of the appeal decision, it is said that “*it is of importance that Mr Perales also requested permission to assist in the on season, Man 62 declined the request due to conflict*”. Bearing in mind that in evidence to me, which I accept, the Claimant denied that the Club had ever denied

such a request, and that there has been no evidence placed before me which indicates lets alone supports such a statement, the question has to be who *said this and when?* This all leads one to question whether the Appeal Board took account of matters that it should not have done.

54. The Appeal Board appears to have had before them the following documents:-

(a) a two page report dated 25th September 2024 signed by Mr Cruz, but which in my view must have been prepared by Ms Mackenzie due to its wording, purportedly setting out the matters discussed during the disciplinary of the 19th August – this is not a contemporaneously written report, it is scarce in detail, and in parts factually incorrect and reads like a self – serving statement which does not reflect a telephone conversation. If this document was ever shown to the Claimant, it could only have been at the appeal hearing. Wording that appears in this document also appears in the Appeal Decision; and

(b) an undated e-mail signed by Mr McDonough being a statement in response to statements made by the Claimant in a disciplinary case. The contents of this e-mail are especially relevant because of the following statement made therein:-

“To my knowledge, I was not aware of Mr Perales working for other clubs except for Glacis United. Whom were, already at that point, not in direct competition with ourselves. They were 12 points behind us with only 5 games to play. For us to achieve our target of finishing the top 6, we would require a minimum of 4 points, making it impossible for Glacis to impact or effect our competition status negatively”.

I would appear that Mr McDonough is mistaken when he refers to Glacis United FC as being the club since the Glacis United match took place on the 17th August 2024, when the season had only just began. However, it does destroy the conflict of interest argument (the season only just having commenced) and it does confirm that Mr McDonough knew about the Claimant’s involvement with the other clubs, and as the person who appears to have spoken regularly with Mr Monsour, it begs the question as to whether at some point such information was passed to Mr Monsour. Here again if this document was ever shown to the Claimant, it must have been at the Appeal hearing; and

(c) a three page note prepared, it appears to me by the Claimant’s solicitors setting out the Claimant’s case.

54. In the circumstances of the above, I am of the opinion that the Appeal Board did not properly and impartially carry out it’s responsibilities and that its decision is materially flawed.

The Claimant’s Case

55. With reference the claim for unfair dismissal the Claimant’s position is that :-

(a) the Respondent has not discharged its burden under section 65(1) of the Employment Act 1932 (“the Act”) of providing a potentially fair reason falling within section 65(2) of the Act. The Claimant contends that the accusation of gross misconduct was an artifice used to disguise a dismissal motivated by the Respondent’s desire to rid himself of the Claimant following the Claimant’s complaint about Mr McDonough interfering with his strength and conditioning duties; and

(b) even if the Claimant's conduct was the reason for the dismissal, the Respondent nevertheless acted unreasonably in treating it as sufficient to dismiss within the meaning of section 65(6) of the Act given that:-

- prior permission and/or acquiesce on the part of the Respondent.
- absence of a reasonable investigation.
- availability of lesser sanctions.

56. With regard to the Claimant's alternative claim for wrongful dismissal the Claimant's position is that on the balance of probabilities his conduct was neither gross misconduct or conduct that would so undermine the trust and confidence inherent in the Claimant's contract so as to entitle the Respondent to dismiss, and that therefore pursuant to section 55(2) of the Act the Claimant was entitled to be compensated for the termination of his fixed term contract.

The Respondent's Case

57. The Respondent has sought not to take part in these proceedings but it has filed documentation which I need to take account of. The Response filed has attached to it a four page Annex setting out the Respondent case. The contents of this annex have virtually been copied word for word from the Appeal Decision and therefore add little to what is contained in the Appeal Decision. In essence the Respondent's case is that the Claimant admits to not having obtained consent (written or otherwise) to provide physiotherapy services on the 17th August 2024 to Glacis United FC, that the Club had never previously given its consent to the Claimant providing physiotherapy services to another club, that the provision of such a service to Glacis United FC without the consent of the Club was gross misconduct which entitled the disciplinary board of the Club to reasonably dismiss the Claimant pursuant to the terms of his contract.

The Law

Unfair Dismissal

58. Section 59 of the Act provides that every employee has the right not to be unfairly dismissed by his employer provided that the employment is not excluded by the provisions of sections 60 to 63 of the Act.

59. Section 60(1) of the Act requires the employee to have been continuously employed for a period of not less than 52 weeks ending with the effective date of termination. The Claimant meets this requirement since he was employed between the 23rd July 2023 and the 20th August 2024, a period which is over 52 weeks.

60. An employee has to satisfy the tribunal that he was dismissed by the employer from his employment. This requirement is met in this case since in the letter of the 20th August 2024, the Respondent states clearly that the Claimant's contract was terminated with immediate effect for gross misconduct.

61. The Claimant having met both above-mentioned requirements the principal issues left to determine are as follows. Section 65 of the Act provides that:-

“In determining for the purposes of sections 59 and 70 whether the dismissal of an employee was fair or unfair, it shall be for the employer to show:-

(a) what was the reason (or, if there is more than one, the principal reason) for the dismissal; and

(b) that it was a reason falling within the next following subsection, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held”.

Thus, in this case the Respondent has Firstly to prove that the reason or principal reason for the Claimant’s dismissal was gross misconduct as a result of the Claimant participating on the 17th August 2024 in the match between Europa Point FC v Glacis United FC, and Secondly to prove that said reason or principle reason was one provided for in Section 65(2) of the Act and which justified the dismissal of the Claimant as a strength and conditioning coach in all the circumstances of the case taking into account equity and the substantial merits of the case.

62. The reason for a dismissal is a question of fact to be proved by the employer and determined by a tribunal since the tribunal is not bound by the characterisation given by the employer. In *Abernethy v Mott Hay and Anderson* ((1974) ICR 323), Cairns LJ stated:-

“A reason for the dismissal is a set facts known to the employer, or beliefs held by him, which cause him to dismiss If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason”.

63. In the Respondent’s letter of the 20th August 2024 the reason given for the dismissal was that the Claimant had breached his contract “*by working with Glacis FC as their club physio during their game on 17th August 2024*” and that this constituted gross misconduct as it violated clauses 3.1.5 and 3.2.5 of the Contract. The Claimant strenuously disputes that this was the real reason for his dismissal and instead alleges that the facts of the case demonstrate that the reason given by the Respondent was a mere pretext to camouflage the Respondent’s desire to simply remove him in order to employ Mr McCoy. So, the first question for this tribunal to determine is what was the real reason for the dismissal.

64. Where conduct is relied upon as the reason for dismissal, as is the case here, the case of *British Home Stores Limited v Burchell* (1980) ICR 303 held that the Respondent has to satisfy a threefold test; namely:-

(a) that the Respondent did genuinely believe that the Claimant was guilty of the alleged misconduct;

(b) the Respondent had reasonable grounds on which to sustain that belief; and

(c) at the time the Respondent formed that belief, he had conducted as much investigation as was reasonable in all the circumstances of the case.

65. If the reason or principal reason for the Claimant’s dismissal is determined by this Tribunal to be gross misconduct for having participated in the match of the 17th August 2024, then the reason for the dismissal would fall within the provisions of section 65(2)(b) of the Act and therefore the Respondent will have satisfied the requirement that the

reason for the dismissal was one of the potentially fair reasons set out in section 65 of the Act.

66. In the event that the Respondent is able to prove compliance with the provisions of section 65(1) and (2) of the Act, the Tribunal nevertheless has to be satisfied that the Respondent acted reasonably in treating it as sufficient for dismissal having regard to the principles of equity and the substantial merits of the case.

67. In the case of Iceland Frozen Foods Limited v Jones (1983) ICR 17 Guzman Lopez stated:-

“In judging the reasonableness of the Respondent’s conduct, I must not substitute my decision as to what is the right course to adopt for that of the Respondent. The standard is that of the hypothetical reasonable employer”.

“In many cases there is a band of reasonable responses whereby one employer might reasonably take one view, another quite reasonably another. A dismissal is only unfair if no reasonable employer would have dismissed”.

“The function of the Employment Tribunal, as an industrial jury, is to determine whether in the particular circumstances of the case, the decision to dismiss the employee fell within the band of reasonable responses, which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair, if the dismissal falls outside the band, it is unfair”.

“To gather all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances whether the dismissal of the Claimant was such that a reasonable employer carrying on the Respondent’s business would have regarded the dismissal as a reasonable response and whether, in all the circumstances of the case, the dismissal was carried out in a fair way”.

68. In the case of London Ambulance Service NHS Trust v Small (2009) IRLR 563 it was held that a Tribunal was not entitled to substitute its view for that of the original disciplinary decision maker but that it was entitled to find that no reasonable employer could have dismissed in the circumstances of the case.

69. In the case of Polkey v AE Dayton Services Limited (1988) IAC 344 Lord Bridge stated:-

“..... in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation If an employer has failed to take the appropriate procedural steps in any particular case, the one question the industrial tribunal is not permitted to ask in applying the test of reasonableness posed by s.198(4)f is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken”.

Decision

70. Was the Claimant’s conduct in participating as a physiotherapist as part of the Glacis United squad that took part in the match of the 17th August 2024 the real or the principal reason for the Respondent’s decision to dismiss the Claimant? The Claimant alleges that it was not the real reason because:-

(a) the letter of the 20th August 2024 advising that he could return to work was issued minutes before the letter of dismissal and such juxtaposition was inconsistent with a genuine misconduct decision and supports pretext. I do not agree with such a suggestion/observation as in my view it was perfectly reasonable for the Respondent to have resolved the issues that arose between the Claimant and Mr McDonough from the whatsapp exchange of the 10th August 2024 before dealing with the issue of the potential breach of contract.

(b) Mr McCoy's alleged employment on or by the 23rd August 2024, prior to the Claimants termination becoming effective suggested that the Claimant's replacement had been decided upon prior to the Claimant's dismissal – when Mr McCoy's employment with the Respondent commenced is not known but we do know that:-

(i) according to the Claimant's whatsapp message to Mr Cruz on the 16th August 2024, Mr McCoy had been introduced to the players as being the assistant manager and strength and conditioning coach;

(ii) neither Mr Cruz or any other club official on that day or at any time subsequent to the 16th August denied that Mr McCoy had not been so employed; and

(iii) at the match between the Respondent v FCB Magpies on the 23rd August 2024, Mr McCoy participated in that match on the team bench of the Respondent.

In my opinion this is all at the very least indicative that Mr McCoy had been chosen to have some official employment function within the Respondent by the 20th August 2024;

(c) the Claimant had been excluded from training, team communications and strength and conditioning duties during the pre-season, a course of conduct consistent with a desire to remove the Claimant from his duties and responsibilities. There is no doubt from the whatsapp messages produced that the relationship between the Claimant and Mr McDonough had been deteriorating before the season ended but deteriorated rapidly once the season ended. On the Claimant's side at least, there were issues of not feeling valued or trusted and on Mr McDonough's side there was a perception that the Claimant was always on his "case". But in itself is this indicative of a desire to get rid of the Claimant? I think not necessarily in itself but then one has to go on to consider the events of the 10th August 2024. The whatsapp exchange of the 10th August 2024, brought things to a head between the Claimant and Mr McDonough and surely must have made the Respondent query before a new reason commenced whether it was possible for Mr McDonough and the Claimant to continue to work together and, if not, who they preferred to lose for the greater good of the team.

(d) The Claimant had been given express or implied permission in or around February 2024 to conduct physiotherapy services for other clubs during matches, and this permission had never been rescinded, and the Respondent had never communicated to the Claimant that he could not carry out such services, and therefore the allegation that the Claimant had committed an act of gross misconduct as a result of providing his services to Glacis United FC was no more than the excuse they required to get rid of the Claimant. Whilst Mr Grant's submissions on this point fail to take

into account the following, I nevertheless have to bear them in mind when making my determination:-

- (i) there is no independent or corroborative evidence to indicate/prove that in January/February 2024 Mr McDonough confirmed that the club, as distinct from himself, had no objection to the Claimant providing physiotherapist services to other clubs. The Claimant's evidence only goes so far as saying the Mr McDonough had no objection;
- (ii) under the terms of the Contract the Claimant was required to obtain written permission from the Respondent before undertaking such services and this certainly did not occur with regard to the 17th August match;
- (iii) other than on the 29th June 2024 the Claimant never seems to have requested permission from the club hierarchy (as distinct from Mr McDonough) to conduct services for other clubs;
- (iv) the whatsapp exchanges of the 29th June 2024 should have made the Claimant aware not only of the need to obtain consent before providing third party services but also that the consent had to come from one of Messrs Cruz, Aldorino or Monsour;
- (v) the Claimant should have realised when in the evening of the 16th August 2024 he was contacted to take part in the next day Glacis United FC match that he was required to obtain the prior permission of the Respondent. He did not do so and one can only wonder whether the reason for this is that the Claimant had that same day learnt about Mr McCoy's alleged appointment; and
- (vi) the Claimant himself admits that he was unaware of the provisions of his contract until sometime in June/July 2024 and therefore it seems to me unlikely that the Claimant ever considered the issue of whether consent was required, let alone who had ostensible or other authority to give such consent on behalf of the Respondent.

In the light of the above, I do not accept that on the 17th August 2024 the Claimant had or could be implied to have had the permission of the Respondent to undertake for a third club the services he undertook on the 17th August 2024. Furthermore, I do not accept the proposition that at any time the Respondent waived expressly or impliedly the contractual requirement that the Claimant obtain prior written permission before providing services to a third party;

- (e) the Respondent's suggestion that the services provided on the 17th August 2024 had been a conflict of interest because it was conducted in a competition in which the Respondent and the third party were competing was unsustainable since physiotherapy services are distinct from strength and conditioning services, the GFA encouraged the few qualified sports therapists to cross-cover with third party clubs, the Respondent adopted a totally different approach to Mr Guerra, an employee, providing his physiotherapist services to third clubs without sanction and Mr McDonough had confirmed in his written statement that there was

no such conflict. I find that there was and there could not be a conflict between the Claimant's duties and obligations as a strength and conditioning coach, which according to the Contract required him to "*develop analytic reports in relation to the head coach's objectives regarding player performance in relation to training, match play and scouting*", and as a physiotherapist, which requires a person to treat such injuries and attend to such medical emergencies as may arise in the course of the match irrespective of who the person plays for or is associated with. To imply, as the Respondent has done, that acting as a physiotherapist in a match involving a third party could somehow potentially or otherwise be detrimental to or affect the Respondents league position, especially at the very beginning of the season, or otherwise cause harm or injury to the Respondent or its players or affect its tactics or game plans seems to me to be bizarre and indicate either a total lack of knowledge about the game or is simply being used as an excuse.

71. Having considered the matter fully and taking everything into account, I find that the Respondent has not been able to discharge the burden of showing that the real or principal reason for the dismissal was the Claimant's conduct in participating in the match of the 17th August 2024.

72. Even if I am wrong in determining this, I find that even if the real or principal reason was the Claimants participation in the 17th August 2024 match, such participation could not contractually amount to misconduct. The Respondent relies on clause 3.1.5 and 3.2.3 of the Contract in alleging misconduct on the part of the Claimant. Clause 3.1.5 required the Claimant not to coach or manage football for a third party. The Claimant clearly did not do this; providing physiotherapist services can by no stretch of the imagination be said to be managing/coaching Glacis United FC on the 17th August 2024. This leaves clause 3.2.3. Certainly, the Claimant breached this provision on the 17th August 2024 but strictly speaking this provision had been breached by the day after the signing of the Contract since through the Active Sports Clinic the Claimant provided third party clubs and their players with his services, and this with the full knowledge of the Respondent. The breach of clause 3.2.3 was misconduct but was it gross misconduct, which after all is what is required by clause 10.1 if the Contract was going to be terminated. In my opinion it was not gross misconduct as the conduct could not be seen by a reasonable employer to be an express or implied repudiation of a fundamental term of the employment contract. The conduct of the Claimant could not be said to be sufficiently incompatible with the continuation of the employment relationship in all the circumstances of the case and the work that the Claimant had been employed to conduct.

73. Even if I am wrong in my determination that it was not gross misconduct, it is my opinion that the circumstances of the misconduct were such that no reasonable employer would have dismissed the Claimant based on the circumstances in question. When deciding this I very much bear in mind that this tribunal should not substitute its own view for that of the original disciplinary decision maker unless it finds that no reasonable employer would have dismissed in the circumstances of this case.

74. I find that no reasonable employer would have considered dismissal to be within the band of reasonable responses on the facts of the case. I have come to this conclusion on the back of the following procedural and substantive considerations:-

- (a) the Claimant was given no prior warning that he was in effect attending a disciplinary hearing when he attended a telephone

conversation with Mr Cruz and Ms McKenzie on the evening of the 19th August;

- (b) the Claimant was not given a reasonable opportunity to prepare for and/or put his case to the disciplinary board before the hearing was held on the 19th August, if indeed this was what it was;
- (c) the Claimant was not given advance notice of the disciplinary breach alleged and not informed of the process to be followed with regard to the disciplinary hearing, especially with regard to the opportunity to have some one present with him at the hearing and the right to call witnesses and present evidence should he wish to do so;
- (d) the Appeal Board hearing and determination was materially flawed for the reasons given above;
- (e) the Respondent failed to abide with the clauses in the Contract as to the procedural steps to be followed in a disciplinary hearing, as to when termination occurred and as to the giving of reasons for the decision taken;
- (f) the Respondent had repeatedly broken prior to the 17th August the terms and conditions of the Contract and, as at the 16th August, it had at the very least indicated to the Claimant that it might have breached those terms yet again by appointing Mr McCoy as a strength and conditioning coach;
- (g) prior to the 17th August the Respondent had on at least one occasion (St Joseph's) given the Claimant permission to undertake physiotherapist duties for another team and at least one, if not more, of the Respondent's officials knew the Claimant was providing physiotherapist services both through and outside of the Active Sports Clinic to individuals of and to clubs;
- (h) the Claimant did not hide or attempt to hide in any way the provision of physiotherapist services to other clubs either on the 17th August or at any time before this;
- (i) the Respondent's own physiotherapist Mr Guerra was providing his services to other clubs and yet no action appears to have been taken against him; and if Mr Guerra was officially allowed to provide the third party services why not the Claimant;
- (j) the Respondent did not notify the Claimant prior to the commencement of the new reason in August 2024 that it would no longer acquiesce to or permit the Claimant, or indeed any other employee, to provide their services to third parties;
- (k) the Claimant had not been disciplined in any way prior to the incident of the 7th August and had indeed been commended by the owner of the Respondent; and
- (l) a lesser penalty was available and indeed was very much more appropriate to dismissal in all the circumstances of the case.

Conclusion

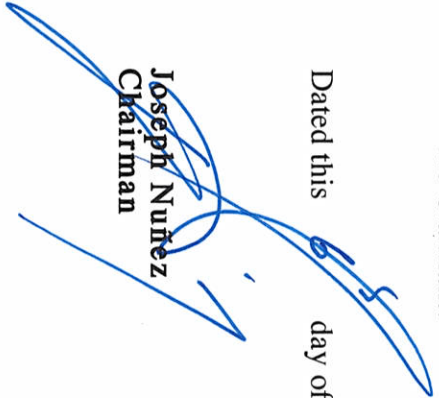
75. I find that the Respondent has not discharged its burden under section 65(1) of the Act to show that the reason or the principal reason for the dismissal was a reason falling within the provisions of section 65(2) of the Act.

76. I further find that even if the reason or the principal reason for the dismissal came within the provision of section 65(2) of the Act that such dismissal was unfair as no reasonable employer would have considered on the facts of the case dismissal to be within the band of reasonable responses.

77. Having found that the claim for unfair dismissal succeeds there is no point in going on to consider the Claimant's alternative claim for wrongful dismissal and I do not do so.

78. Having found that the Respondent unfairly dismissed the Claimant we will now set aside a date for the consideration of the compensation payable to the Claimant.

Dated this  day of October 2026


Joseph Nuñez
Chairman