



Neutral Citation Number: [2018] EWHC 73 (QB)

Case No: HQ17X02579

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26 January 2018

Before :

**HIS HONOUR JUDGE BC FORSTER QC**  
**(SITTING AS A JUDGE OF THE HIGH COURT)**

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Between :

(1) BOURNE RAIL LIMITED	<b><u>Claimants</u></b>
(2) BEAVER MANAGEMENT SERVICES LIMITED	
- and -	
(1) ROBERT THOMAS ASHTON	<b><u>Defendants</u></b>
(2) IAN ROCKLIFFE	
(3) STEVEN HALL	
(4) MICHAEL HEALEY	
(5) XRAIL SOLUTIONS LIMITED	
(6) XRAIL GROUP LIMITED	

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**Mr C Quinn** (instructed by **Brabners**) for the **Claimants**  
**Mr A Solomon** (instructed by **Hill Dickinson LLP**) for the **First Defendant**  
**Mr N de Silva** (instructed by **Clarke Willmott LLP**)  
for the **Second, Third and Fourth Defendants**  
**Mr J Mehrzad** (instructed by **Addleshaw Goddard**) for the **Fifth and Sixth Defendants**

Hearing dates: 20-25, 27-29 November, and 11 December 2017

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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## **His Honour Judge Forster QC :**

### **Introduction**

1. At the end of June 2017, a number of operatives who worked in the Signalling and Telecommunications Division of the First Claimant terminated their individual relationships with the First Claimant. They became sponsored by the Sixth Defendant and began to work through them.
2. The Claimants claim Damages, an Injunction and other relief against the Defendants on the basis that they were all party to an Unlawful Means Conspiracy to take from the Claimants their work and operatives. It is expressly pleaded at paragraph 36.5 of the Amended Particulars of Claim that it was dishonest for the Defendants to conspire together to act in concert in the way that they did. The Claim is also brought against the First, Second, Third and Fourth Defendants on the ground that they acted in breach of the duties they owed to the Claimants.
3. The First Defendant by way of Counterclaim claims that he has been wrongly dismissed and has thereby suffered loss.
4. On 27 July 2017 Mrs Justice May made an Order Accepting Undertakings. The Order, in part, granted Springboard Relief preventing the Defendants from employing named individuals who had worked for the Claimants.
5. A speedy trial was ordered. There have been 8 days of evidence. The trial has been robustly conducted by each party. There has been little agreement during the trial. I have been referred to many documents, records of messaging and telephone calls. There has only been limited agreement as to the application of legal principles in the situation that has arisen.

### **Michael Healey**

6. Michael Healey, the Fourth Defendant, is unwell and was unable to attend the trial. There was no application to adjourn the hearing which had been fixed for some time. I considered the medical evidence submitted on his behalf which confirmed his illness and the undesirability of him having to attend the trial. In the circumstances I have ensured that his alleged involvement has been fully explored in so far as it can be in his absence.

### **The Parties**

7. The First Claimant is an employment company which provides employees to work in the rail industry. The company has two divisions: Signalling and Telecommunications (“S&T”) and Overhead Lines Work.
8. The company was originally established and built up by the First Defendant. In 2012 the company was acquired by the Second Claimant. The Second Claimant operates as a recruitment agency in the building services, construction, rail and engineering industries.

9. The First Defendant, Mr Ashton, was at the relevant times the Managing Director of the First Claimant. He was employed under a contract of employment dated 9 March 2012. In such a capacity he owed fiduciary and statutory duties to the First Claimant. The First Defendant was required to pursue the best interests of the First Claimant and he was responsible for the operation of the company.
10. The contract of employment includes a number of post-termination restrictive covenants.
11. On the 18 July 2017 the First Defendant was suspended as a result of the matters which give rise to these proceedings.
12. At the end of July 2017 the initial application was made to the Court. After that date the First Claimant commenced a disciplinary procedure against the First Defendant. On 30 October 2017, the First Claimant dismissed the First Defendant with immediate effect and without notice or pay in lieu of notice.
13. I note at this stage that the First Defendant contends that this action amounted to a repudiatory breach of contract. By letter dated 6 November 2017, the First Defendant accepted what he considered to be a repudiatory breach and resigned his directorship of the First Claimant.
14. The Second Defendant, Mr Rockcliffe, was employed by the Second Claimant as the Resource Manager responsible for Signalling and Telecommunications. He was employed under a contract of employment dated 3 June 2013. The contract of employment contained, at paragraph 4.2, a duty to perform his job to the best of his ability and to comply with the duties implied by law, and at paragraph 19, a condition not to disclose confidential commercial information relating to the affairs of the company.
15. The Second Defendant, who is very experienced in the industry, was responsible for the work carried out for a company called Carillion. He met with them and discussed their staff needs. He then arranged the supply of workers as required by them. He reported to the First Defendant. He mainly covered the north of England.
16. On 17 February 2017 he was given Notice of Termination following a recommendation made by the First Defendant that the Second Defendant be made redundant. His employment with the Second Claimant was terminated on 17 March 2017.
17. On 30 May 2017 the Second Defendant became employed by the Sixth Defendant as an S&T manager.
18. The Third Defendant, Mr Hall, was engaged by the Claimant as an independent consultant through a service company. He was not an employee of either Claimant company.
19. By an email dated 29 November 2014 the Third Defendant made a proposal to the Claimants. This followed discussions with the First Defendant. As a result on 1 January 2015 the Third Defendant started working as an independent contractor for the First Claimant. He was paid a rate of pay per day. No formal document was

- prepared between the First Claimant and the Third Defendant containing any terms or restrictions.
20. The Third Defendant, who is also very experienced in the industry, worked as an S&T manager. He was responsible for the work carried out for a company called Colas Rail Limited. He sourced the work and arranged the supply of labour as required by them. He mainly covered the south of England.
  21. When he joined the First Claimant he was followed by other family members and colleagues who were used to working with him. Although not a formal team it is known in the industry that those who enjoy working together and share a common interest often choose to move at or about the same time.
  22. On 26 June 2017 the Third Defendant sent an email to the First Defendant. He stated that he would not be continuing with Bourne Rail and that his last working day for them would be 30 June 2017.
  23. On 2 July 2017 the Third Defendant began working for the Sixth Defendant as an independent contractor carrying out the role of an S&T manager. He continued to carry out work for Colas Rail.
  24. The Fourth Defendant, Mr Healey, was employed by the Second Claimant as a Resource Manager.
  25. He commenced his employment on 22 April 2013. He worked in the Overhead Lines division and not in the S&T division. He sometimes also worked as an operative 'on the tracks'.
  26. His contract contains similar obligations to those outlined in respect of the Second Defendant.
  27. On 3 May 2017 the Fourth Defendant tendered his resignation and on 31 May 2017 left his employment.
  28. On 22 June 2017 the Fourth Defendant became de-sponsored by the Claimant.
  29. On 27 June 2017 the Sixth Defendant became his primary sponsor. He has since worked as an independent contractor for them.
  30. The Fifth Defendant (Xrail Solutions) was incorporated on 18 October 2011. Munir Patel is a director. The company has carried out full project delivery including design consultancy, installation and testing as well as people placement.
  31. The Sixth Defendant (Xrail Group) was incorporated on 8 May 2015. Munir Patel is the Managing Director. This company is the parent company of three wholly-owned subsidiaries. The company carries out work in this country and is anxious to expand into the Middle East where some work has been completed in Dubai.
  32. The claim was initially brought only against the Fifth Defendant. On behalf of that company it was asserted that the claim had been brought against the incorrect company. As a result the claim was amended to bring in the Xrail Group as the Sixth Defendant.

33. The claim has been maintained against both the Fifth and Sixth Defendant.
34. On behalf of the companies Mr Patel, as Managing Director, states that there was a company restructure in March 2015. This resulted in a division of work and responsibility between the new companies which were formed. He explains that from March 2016 onwards, Xrail Solutions stopped taking on any new business, and continued to service existing contracts until they expire. All new contracts were taken on by the relevant entities in the new structure. He asserts that Xrail Solutions has been inactive and it has played no role in the facts relating to these proceedings.
35. During the course of the trial I asked Counsel for the Claimants whether they intended to continue against Xrail Solutions Ltd. They continued.

### **Working in the Rail Construction Industry**

36. There is no dispute as to the necessary requirements to work in the rail construction industry. I set out the basic essentials which are required to understand the way in which independent contractors or operatives change from one company to another.
37. Network Rail is responsible for the maintenance and construction of railways. They choose contractors to carry out the works required by them. Such contractors include Colas Rail and Carillion.
38. A contractor needs to obtain the services of suitably qualified operatives to carry out the work. Certain companies including the First Claimant specialise in providing the required operatives.
39. Companies who supply operatives must be approved by the contractor carrying out the work for Network Rail. The First Claimant completed the necessary procedures to be approved by both Colas Rail and Carillion.
40. Under the Sentinel Scheme operated by Network Rail, before any rail construction worker can enter or work on any rail construction or maintenance site he must hold a Sentinel card as proof of his ability to work on the railway. This is to ensure that all workers are trained to the standard required and are approved as safe and fit to work on the tracks.
41. The operative must also be registered with a sponsor. There are technical requirements as to registration which I do not need to outline. Companies, such as the First Claimant, who specialise in providing operatives, are registered as sponsors.
42. The life of a subcontractor or operative is uncertain and depends upon the availability of their type of work. Projects are in different places and of differing duration.
43. An individual subcontractor or operative is not tied to his sponsor. The scheme allows for fluidity of movement. The operative can ask to be de-sponsored and become registered with another sponsor. It is a flexible way of working so that an operative can follow work if he so chooses.

44. Under the scheme an operative may also have a number of sub sponsors but it is not necessary for me to consider that further.

### **The Pleaded Claim**

45. In view of the nature of the allegations which have been made it is necessary to clearly state the basis for the claim as set out in the Amended Particulars of Claim.
46. The Claim is set out in paragraph 16 in the following terms:

“On dates unknown but in any event commencing not later than January 2017 the Defendants conspired and/or entered into a common design to do one or more of the following acts by unlawful means (the unlawful means being (1) breaching their own contractual obligations, duties in equity and statutory duty as set out above and/or inducing each other to do so [the Common Design]:

- 16.1 competing with the Claimants on behalf of Xrail;
- 16.2 soliciting and/or inducing each other and also other employees of the Claimants to resign so as to compete with the Claimants;
- 16.3 attempting to conceal their wrongdoing by deleting their emails from the Claimants systems;
- 16.4 soliciting and/or inducing each other to conceal their wrongdoing by deleting their emails from the Claimants systems;
- 16.5 accessing and/or misusing the Claimants confidential and proprietary information for the purposes of Xrail;
- 16.6 failing to report their own misconduct and/or that of the other Defendants despite knowing that such misconduct posed a serious and viable threat to the Claimants business;
- 16.7 in the case of Mr Ashton, acting in breach of relevant restrictive covenants;
- 16.8 acting as described above with the common purposes and intention of furthering the business of a competitor, namely Xrail.”

### **Legal Principles**

47. I was initially provided with four volumes of legal authorities. I directed counsel to provide an agreed summary of the relevant principles. Counsel appearing on behalf of the Defendants, have agreed such a document. Counsel for the Claimant makes reference to the relevant principles in both his opening and closing submission.

48. In considering the case I keep clearly in mind that the more serious the allegations made, the more important it is for the case against a defendant to be set out clearly and with adequate particularity.
49. In *ED&F Man Sugar v T&L Sugars* [2016] EWHC 272 it was stated that where a conspiracy alleges dishonesty ‘*all the strictures that apply to pleading fraud*’ are directly engaged so that it is necessary to plead all the specific facts and circumstances supporting the inference of dishonesty.
50. The allegations made in this case are serious. In *Group Seven Ltd v Anor & Ors* [2017] EWHC 2466 Mr Justice Morgan considered the application of the standard of proof when there are allegations of dishonesty and fraud. After reviewing the authorities, the Judge confirmed that the standard of proof is the civil standard, and that is the allegations are required to be proved on the balance of probabilities. He considered that while it is obviously right to consider the inherent probability, or the inherent improbability, of an event in considering whether it has been proven on the balance of probabilities, there is no necessary connection between seriousness and inherent improbability. In this case I consider it improbable that any Defendant would act in the way alleged. I will take that into account when deciding whether the case has been proven on the balance of probabilities.
51. In *Marathon Asset Management LLP and another v Seddon and others* [2017] IRLR 503 the Court considered the requirements of a Common Design conspiracy at paras. 132 and 135:
- “To establish liability for assisting another person in the commission of a tort [common design], it is necessary to show that the defendant (1) acted in a way which furthered the commission of the tort by the other person and (2) did so in pursuance of a common design to do, or secure the doing of, the acts which constituted the tort...
- The elements of this tort [conspiracy] are a combination or agreement between the defendant and another person pursuant to which unlawful action is taken which causes loss or damage to the claimant and is intended or expected by the defendant to do so (whether or not this was the defendant’s predominant purpose).”
52. I note that it was also confirmed that the tort of conspiracy to injure by unlawful means is actionable only on proof of actual loss.
53. It is well established that every employee has a duty of good faith and fidelity. Those who are employed have a duty not, without reasonable and proper cause, to conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them and their employer.
54. Insofar as the claim is brought for breach of confidence it is established that information should only be regarded as being confidential where:
- (1) it has the necessary quality of confidence;

- (2) it has been imparted in circumstances importing an obligation of confidence; and
  - (3) there is an unauthorised use of that information to the detriment of the party communicating it.
55. It is agreed that the wrongful summary dismissal of an employee is a repudiatory breach of contract: ***General Billposting Limited v Atkinson*** [1909] AC 118 (HL). The effect of a repudiatory breach is to discharge the innocent party, who accepted the breach, from all his future obligations under the contract. In the context of this case that would include the post termination restrictive covenants and obligations of confidentiality.

### The Essential Background Chronology

56. The Claimants and the Defendants have each provided a detailed chronology. A Joint Chronology has not been agreed. I have considered each carefully and now detail some of the background which is necessary to understand and consider the issues in the case.
57. On 22 January 2016 Xrail Solutions Ltd entered into a contract for services with London Underground Ltd.
58. On 17 March 2016 Mr Ashton, the First Defendant, accompanied by Mr Strickland met Mr Patel.
59. On 18 March 2016 Mr Ashton sent to Mr Patel an email attaching pay rates.
60. On 21 March 2016 Mr Patel emailed the staff of Xrail about the expansion of the Xrail organisation.
61. On 25 March 2016 Mr Patel sent a text to Mr Ashton: *'Sorry I missed your call yesterday. I was just ringing for your private email address. Plus I'm up north this weekend so if you wanted to meet up for dinner or something'*. Mr Ashton then gave Mr Patel his personal email address.
62. On 29 March 2016 Mr Ashton emailed Costain attaching Mr Patel's details.
63. On 26 April 2016 Mr Patel contacted Mr Ashton asking whether he had got the rates for him. Thereafter Mr Ashton sent Mr Patel rates for Colas work.
64. On 4 June 2016 Xrail Group signed a framework agreement with Colas for the provision of operatives.
65. On 29 September 2016 there was contact between Mr Ashton and Mr Shaw. Mr Ashton stated: *'I'll have to make other plans'* and Mr Shaw responded *'Munir'*.
66. On 4 October 2016 there was a meeting between Mr Ashton and Mr Shipley at which it is alleged Mr Shipley told Mr Ashton to reduce staffing costs by 33%.
67. On 7 October 2016 Mr Ashton sent a text to Mr Strickland *'I need a job! Shipley is taking over the whole of the business. I think I'll be sideswiped'*.

68. On 17 November 2016 Mr Ashton forwarded Mr Hall's CV to Mr Patel and on the 23 November 2016 forwarded the CV of Mr Rockliffe.
69. On 1 December 2016 there was a meeting between Mr Ashton and Mr Patel.
70. On 4 January 2017 Mr Ashton created a business plan document on his laptop naming only one competitor (BMS).
71. On 17 January 2017 there was a meeting between Mr Ashton, Mr Rockliffe Mr Hall and Mr Patel in Runcorn.
72. On 20 January 2017 Mr Rockliffe emailed Mr Patel and started sending a number of CV's to him.
73. On 20 January 2017 Mr Hall sent competency information to Mr Patel.
74. On 23 January 2017 Mr Hall sent a spreadsheet through to his personal Hotmail address.
75. On 25 January 2017 Mr Rockliffe received an email to his personal account from John Woods, the Senior Signalling Supervisor at Carillion. It referred to Mr Rockliffe *'looking to migrate his staff who we use weekly to Xrail'*.
76. On 26 January 2017 Mr Woods emailed Mr Patel in respect of Xrail being approved to work for Carillion: *'who is signalling lead/manager (I assume Ian Rockliffe would play a part in this)'*.
77. On 31 January 2017, Mr Ashton informed Mr Shipley of his opinion that Mr Rockliffe should be made redundant. There are subsequent telephone calls between Mr Ashton, Mr Rockliffe and Mr Patel.
78. On 4 February 2017 Mr Shipley sent an email to Mr Ashton and others in respect of the need to turn the losses around.
79. On 7 February 2017 Mr Patel submitted a Dubai Metro bid.
80. On 13 February 2017 Mr Rockliffe was given Notice of Termination to expire on 17 March 2017.
81. On 14 February 2017 Mr Rockliffe emailed Mr Patel in respect of a salary package. He also asked *'did you send a confirmation to John Woods regarding the meeting on the 2 March'*. Mr Patel replied: *'your contract is being drawn up and will be sent to you within a week'*.
82. On 21 February 2017 Xrail Group entered a contract for services with London Underground Ltd.
83. On 21 February 2017 Mr Rockliffe emailed Mr Patel asking for details of his salary proposal. He stated that he would rather be PAYE scheme *'like Steve'*.
84. On 21 February 2017 Paul Goodchild was appointed by his father to the position of Operations Director at Bourne Rail.

85. On 23 February 2017 Mr Ashton sent Mr Patel the CV of Mr Owen.
86. On 24 February 2017 Mr Moorby of Colas Rail emailed Mr Patel asking him '*can you send me a copy of the paperwork you sent or received from Colas. Working on getting you on the list*'.
87. On 28 February 2017 Mr Healey forwarded to his private email address a spreadsheet received from Mr Oliver which contained a large number of contact numbers and addresses for rail workers.
88. On 1 March 2017 at 09:09 Mr Patel emailed Mr Hall in respect of a spreadsheet for the rates that Xrail required for work in London. At 10:18 Mr Moorby of Colas sent Mr Hall Policy and Compliance documents in respect of becoming an approved contractor with Colas.
89. On 2 March 2017 there was a meeting between Mr Patel, Mr Rockliffe and Mr Woods of Carillion. At 11:47 Mr Hall emailed Mr Patel 'rates new and old' from his personal email address.
90. On 3 March 2017 Mr Patel forwarded to Mr Hall details of the Xrail proposal which it sent to Colas and on 6 March 2017 forwarded an earlier exchange of emails between Xrail and Mr Moorby of Colas.
91. On 6 and 7 March 2017 Mr Hall emailed Mr Patel with script required by Xrail and informed him the 'rates need adjusting' in respect of the Colas proposal.
92. On 7 March 2017 Mr Hall emailed Mr Patel asking for registration packs to be sent to him.
93. On 17 March 2017 the Xrail proposal in respect of services to be provided to Carillion was prepared.
94. On 17 March 2017 Mr Patel emailed Carillion in respect of migrating Mr Rockliffe over.
95. On 25 March 2017 Mr Hall forwarded, to Mr Patel, Bourne Rail documents and details of equipment which was being used for work.
96. On 4 April 2017 Mr Healey sent an email to his private email address containing pay rates agreed with Costain. The rates had been provided to Mr Healey by Mr Ashton.
97. On 6 April 2017 Mr Rockliffe emailed Mr Woods asking if there was any development with regard to getting Xrail onto Carillion's approved list.
98. On 6 April 2017 Mr Hall emailed Mr Goodchild and others setting out concerns arising from the manner in which the company was being operated.
99. On 7 April 2017 Mr Healey sent an email to his private email address containing details of workers including primary sponsors. On 10 April 2017 he sent an email to his private email address enclosing workers contact details.

100. On 10 April 2017 Mr Hall sent Sentinel details for both Mr Rockliffe and himself to Mr Patel.
101. On 14 April 2017 Mr Rockliffe emailed numerous Bourne Rail workers attaching registration packs.
102. On 15 April 2017 Mr Healey sent an email to his private email address with a spreadsheet containing workers` details.
103. On 19 April 2017 Mr Hall sent a registration form to Mr Paul Healey informing him to return it to the Xrail email address and not Bourne Rail.
104. On 25 April 2017 Mr Healey sent a series of CV`s to his email address.
105. On 2 May 2017 Mr Ashton emailed Mr Goodchild advising him of meetings with AMEY and other projects.
106. On 3 May 2017 Mr Healey gave the Claimants notice of resignation.
107. On 8 May 2017 Mr Rockliffe commenced employment with Xrail.
108. On 10 May 2017 Mr Hall forwarded to Mr Patel an exchange of emails with Colas.
109. On 12 May 2017 Mr Healey sent an email to his private email address attaching a staff roster.
110. On 22 May 2017 Carillion provided a contract to Mr Patel for the supply of labour services by Xrail.
111. On 23 May 2017 Mr Rockliffe informed Carillion that from now on Mr Oliver would be dealing with S&T. On the same date Mr Healey forwarded copies of Bourne Rail`s induction packs to his private email address.
112. On 24 May 2017 Mr Healey emailed further documents to his private email address.
113. On 25 May 2017 Xrail submitted the bid in respect of the Doha project.
114. On 26 May 2017 Mr Ashton received an email from Mr Moorby of Colas stating *‘once we are sorted, I you can get me a job on Xrail’*. Mr Ashton responded *‘Will do’*.
115. On 5 June 2017 Mr Moorby emailed Mr Ashton informing him that Xrail had still not passed its approved contractor test for Colas.
116. On 14 June 2017 Mr Rockliffe sent Mr Healey an Xrail registration pack and on the following day Mr Healey asked Xrail to sponsor him.
117. On 16 June 2017 Mr Oliver referred to his belief that Xrail would be opening in Runcorn.
118. On 21 June 2017 Xrail submitted a bid in respect of the Dubai Metro.
119. On 26 June 2017 Mr Hall sent to Sean Oliver an email attaching an Excel spreadsheet roster *re-upcoming* Colas work.

120. On 26 June 2017 Mr Hall gave notice of termination.
121. On 26 June 2017 Mr Healey emailed Mr Ford and referred to the need to keep discussion covert.
122. On 27 June 2017 Xrail Group Ltd entered into an agreement with Colas and Mr Hall was sent 'Waterloo requirements' by Colas.
123. On 30 June 2017 Bourne Rail workers asked to be desponsored.
124. On 2 July 2017 Mr Hall started to work with Xrail.
125. Although I must consider all of the evidence it is important to have regard to the unlawful acts identified in the Amended Particulars of Claim from which I am asked to draw an inference of common design.

## **The Pleaded Acts**

### **The First Defendant**

126. It is said there are a suspicious number of calls between Mr Ashton and Mr Patel between December 2016 and March 2017.
127. On 26 May 2017 at 16:34 Mr Ashton received an email from Mr Moorby of Colas Rail Ltd which stated that '*once we are sorted you can get me a job on Xrail*'. Mr Ashton responded to that email at 16:50 stating '*will do*'.
128. On 5 June 2017 at 22:04 Mr Moorby of Colas Rail emailed Mr Ashton informing him that Xrail had still not passed its approved contractor test. Mr Ashton deleted this email from his inbox.

### **The Second Defendant**

129. On the 20 and 23 January 2017 Mr Rockliffe emailed Mr Patel a number of CV's.
130. On 25 January 2017 following a conversation with Mr Rockliffe, an email was sent by Mr Woods referring to the migration of staff.
131. On 6 April 2017 Mr Rockliffe emailed Mr Woods asking if he could look into whether there were any more developments regarding getting Xrail onto Carillion's approved list.
132. On 14 April 2017 Mr Rockliffe emailed numerous Bourne Rail workers attaching Xrail induction packs for them to complete.

### **The Third Defendant**

133. On the 17 November 2016 Mr Ashton sent Mr Hall's CV to Xrail.
134. On 17 January 2017 Mr Rockliffe forwarded an email from Mr Patel to Mr Hall saying '*Munirs number is on his email*'.

135. On 20 January 2017 Mr Hall emailed to Mr Patel a competency matrix.
136. On 1 March 2017 Mr Moorby sent documentation to Mr Hall of the type required to become an approved contractor with Colas.
137. On 1 March 2017 Mr Patel emailed to Mr Hall a spreadsheet for rates for work in London.
138. On 6 March 2017 Mr Patel forwarded to Mr Hall an exchange of emails that Xrail had engaged in with Colas Rail Ltd.
139. On 7 March 2017 Mr Hall emailed Mr Patel with suggested script.
140. On 7 March 2017 Mr Hall emailed Mr Patel asking for registration packs to be sent to him.
141. On 25 March 2017 Mr Hall forwarded to Mr Patel numerous Bourne Rail documents and details of certain equipment certification.

### **The Fourth Defendant**

142. At paragraph 34 of the Amended Particulars of Claim it is stated that Mr Healey appears to have spent a significant amount of his time in the final weeks of his engagement by Bourne Rail misappropriating its confidential information by sending it to his personal email address. The submission of the Claimant is that I should infer that he did so for the benefit of Xrail.

### **The Fifth and Sixth Defendants**

143. At paragraph 7 of the Amended Particulars of Claim the Fifth and Sixth Defendants are described as being competitors of the First Claimant. It is asserted that the acts identified in relation to the other Defendants were carried out for the benefit of the Fifth and Sixth Defendants. At paragraph 36 it is stated that Xrail knew that the other Defendants were acting in breach of their contractual duties when carrying out their acts pursuant to the common design.

### **The Evidence**

144. I highlight features of the evidence which are relevant to the issues.

### **Anthony Shipley**

145. Mr Shipley is the Managing Director of the Second Claimant and also a Director of the First Claimant. At this stage I consider only certain parts of his evidence and will draw on other aspects of his evidence when making my findings.
146. He was not directly involved in the day-to-day management of the First Claimant. The First Defendant was the Managing Director and was directly responsible for the operation of the business. In February 2017 the owner of the group, Bernard Goodchild, appointed his son Paul Goodchild to the position of Operations Director.

147. Mr Shipley explained that since January 2015 the company had been supplying varying but substantial levels of work to a customer called Colas Rail Ltd. The work comprised signalling maintenance and upgrade works at various locations within the UK. All activity in respect of dealings with Colas Rail passed through Mr Hall.
148. Mr Shipley outlined that for many years the company also supplied personnel to Carillion. All activity in respect of dealings with Carillion passed through Mr Rockliffe.
149. He stated that the database of operatives sufficiently skilled and suitably qualified for the needs of Colas and Carillion is one of the key confidential assets of the company.
150. Before the matters giving rise to these proceedings Mr Shipley did not consider Xrail to be a competitor. This was because he understood that Xrail was engaged in the recruitment and supply of white-collar workers that is office and professional workers whose jobs generally did not involve manual labour.
151. Mr Shipley confirmed the responsibilities of the relevant Defendants and the requirements of working within the rail construction industry which I have already outlined. In respect of the Fourth Defendant, Mr Healey, it was the understanding of the company that he had resigned to retire. After leaving he went to work shifts through Xrail.
152. He stated that a large number of workers resigned from their sponsorship with the company. Most did so on 29 and 30 June 2017. This was a very unusual situation. It made him suspicious. The workers became sponsored by Xrail and were still carrying out work for the same contractor (being Colas or Carillion) but with sponsorship by Xrail rather than by the First Claimant.
153. As a result he commenced an investigation. Mr Shipley spoke by telephone with the First Defendant, Mr Ashton, who denied any wrongdoing. He said he had been losing sleep over the departures.
154. Much of the evidence given by Mr Shipley concerned his production of emails and other documents which were obtained during the course of the investigation.
155. The sudden exodus of the workers made it difficult for the First Claimant to be able to continue to carry out certain rail work by reason of a lack of the necessary qualified workers. The main concern of a contractor is to complete their project. They need a supply of suitable operatives but they are not too concerned about through which approved supplier the operatives are supplied.
156. At paragraph 76 of his first statement Mr Shipley suggests that Steve Moorby of Colas *'was apparently aware of and engaged in the orchestrated diversion of work from company to Xrail'*.
157. Mr Shipley came to the conclusion that the First Defendant, being the Managing Director, was both aware of and participated in the carefully planned diversion of the Claimants' business to Xrail.

158. Mr Shipley stated that the budgeted company turnover from the Colas work alone for the 12 month period between June 2017 and June 2018 was £1,726,000 of which the gross profit margin was approximately £779,000.
159. Mr Shipley was recalled and produced a spreadsheet concerning the earnings from the Colas work. The production of the document was criticised. The figures were questioned on the basis that they did not reveal the true profit.
160. Mr Shipley confirmed that he was not aware of any evidence of animosity between the First Defendant and Mr Bernie Goodchild.
161. He said that he was not aware of the First Defendant having any interest in a competing company and he did not know of any evidence to suggest that any competing company was to reward the First Defendant in any way.
162. It is accepted that the First Claimant has a framework agreement with Colas and that the last main work was at Waterloo. The First Claimant did undertake work for Colas but Mr Shipley is not aware of the amount of ongoing work.
163. He confirmed that on 23 May 2017 there was a presentation concerning future work. The presentation did not contain any mention of Carillion.
164. On 4 October 2016 there was a discussion about the future operation of the company. There was concern over the level of business. Mr Shipley could not remember the suggestion that there should be a staff reduction of 33% by way of redundancy. It was Mr Ashton who had mentioned three people including Mr Rockcliffe. It was Mr Ashton who identified or nominated Mr Rockcliffe.
165. The witness considered that the telephone records show extensive contact communication between Mr Ashton and Mr Rockcliffe and the others.
166. The analysis of Mr Shipley is that Xrail needed assistance to become approved. They were given the necessary assistance. The operatives moved to them. The operatives carried out the work that they would have been carrying out if they had continued to be with the First Claimant.
167. Mr Shipley immediately accepted that any work brought in by Mr Ashton was a benefit to the company. He pointed out that the First Defendant did not mention or discuss Xrail at their meetings. When pressed he did say that if Mr Ashton had told the Chairman, Bernie Goodchild, that would have been sufficient.
168. When it was suggested that many of the individual actions could be explained, Mr Shipley responded: *'it is the circumstances of it all'*.
169. Mr Shipley accepted that he had not met Mr Hall. He said he was now aware that Mr Hall had brought the Colas work with him when he came to work with the company. He confirmed that the workers had 'fluidity of movement'. His attention was drawn to an email where Mr Hall had stated: *'I would also bring the majority of my staff'*.
170. He believed that Mr Hall was placing some 15 to 20 operatives although he did not know the exact figures.

171. He accepted that the restructure of the business may have resulted in some dissatisfaction. It was put to him that there had been serious difficulties with regard to the payment of operatives, with timesheets and with the payment of expenses. This had been highlighted in April 2017. It was suggested that the response from Paul Goodchild the Operations Director, had been unhelpful.
172. Mr Shipley confirmed that there was real concern as to the operation of the business. He accepted the minutes of the meeting dated 15 June 2017 stated that the Chairman had been concerned about the business losing money and had suggested that it could be '*cheaper to close the business*'. Mr Shipley said that it was not necessary to close the business if it was managed properly.

### **Sean Oliver**

173. Sean Oliver is employed by the Second Claimant but worked as the Compliance Officer at the First Claimant. On 1 August 2017, after the grant of the Injunction Order, he met with three operatives who had stopped working with the First Claimant. Wayne Hooper told him that it was in December 2016 that he had first become aware of the plan to migrate the operatives from the First Claimant to Xrail. He was told by Steve Hall, the Third Defendant.
174. The credibility of the witness is challenged by Mr Solomon. Mr Oliver agreed that he had been disciplined by the First Defendant. At that time he was given a written warning.
175. Mr Oliver was asked to explain how in January 2017 he obtained a national list of rail workers. In an email sent on 6 January 2017 to the First Defendant and others he reported: '*I have attached a spreadsheet I 'obtained' today, it has over 2000 names/contact numbers/addresses for all rail workers over the UK... All we have to say is that we had your name on the database and seeing if you're still free for work, or mass mail/text etc etc, just to protect my source*'.
176. The witness said that he had obtained the list from a source from whom he should not have got it. It was put to him that he had acted unlawfully. In the end he said that he obtained it from: '*a mate of a mate*'. Mr Oliver was asked questions by Mr de Silva about the difficulties the operatives experienced. He said that he was aware of a constant issue over operatives not being paid. From about March 2017 there were difficulties caused by rosters being late, timesheets being late and a failure to book hotels. He was not aware of the position of Mr Hall in relation to such issues. He said that he himself was unhappy because he did not like promises being broken.
177. In respect of the Sentinel system he confirmed that it was an open system where everyone had access to information in respect of the operatives. Contact information was only available to a company who sponsored the operative.
178. Mr Oliver stated that Mr Rockliffe still looked after the Carillion work and the payroll for that work even after he was made redundant.
179. On 10 June 2017 Carillion approached Mr Rockliffe at Xrail to cover a number of shifts. He could only utilise certain operatives if the First Claimant accepted a sub-sponsorship request. Mr Oliver described receiving the email request. He said that he

asked the First Defendant if he could approve the shifts. He said that Mr Ashton approved it and that he was surprised by the approval. When cross-examined he said it was '*bizarre*' to approve it. He accepted that this evidence had not been contained in his witness statement. He said he had forgotten about it. He said that he had only remembered the evidence when going through emails.

180. Mr Oliver confirmed that in a letter to Mr Goodchild he made reference to being offered other employment which included a considerable increase in salary. He explained that he had received a verbal offer from Xrail which included him being paid an extra £7000.

### **Paul Goodchild**

181. Mr Paul Goodchild gave evidence and explained how he joined the Claimants at a time of difficulty. Mr Goodchild stated that sometime after a Board meeting on 15 June 2017 he gave a presentation entitled 'Business Plan/Growth Strategy'. He stated that the First Defendant made no mention of Xrail.
182. The witness outlined that he was told by the First Defendant that Mike Healey was retiring. It was never suggested that he might be going to work at Xrail. He now believes that Mr Healey switched to Xrail working on the same project.
183. On 18 July 2017 he formally suspended the First Defendant. He requested the return of company property but the First Defendant would not return his mobile phone as he claimed that it was a personal phone.
184. Mr Goodchild accepted that Mr Hall had made complaints to him. He agreed that his response could have been perceived as being unsympathetic. Mr Goodchild accepted that Mr Hall had complained about the long hours he was having to work. Reference was also made to a lack of administrative support. He said that he had only met Mr Hall on one occasion in the Runcorn office. He was not aware of the fact that members of the family of Mr Hall were operatives.
185. He was asked questions in respect of the business plan. He agreed that Carillion had been removed because it seemed to have no relevant work. The witness considered that if there was a potential company from whom work could be obtained, it would have been in the plan.

### **Jim Simms**

186. Mr Simms conducted the disciplinary hearing which the First Defendant did not attend. He recommended the summary dismissal of the First Defendant.

### **Robert Ashton – The First Defendant**

187. Mr Robert Ashton described how he set up Bourne Rail with two others. The Second Claimant now owns the entirety of the shares in Bourne Rail and he is a 1.25% beneficial owner of the Second Claimant. He asserts '*I'm very surprised that I'm being accused of working against the interests of the applicants when I'm not merely an employee but also a director in Bourne and a shareholder in BMSL*'.

188. At a meeting on 4 October 2016 Mr Shipley announced that he wished to reduce office staffing costs by a third. Mr Ashton stated that he was worried about the size and scale of the redundancy process. He felt it would send out the wrong message to the industry.
189. As a result of the reduction in staff he was concerned by the inability of the company to process payments to contractors, to book hotels, and to renew competency tickets.
190. He was asked about the email sent to him on 26 May 2017 by Mr Moorby. Mr Ashton believes that the email referred to getting Mr Moorby a job on Crossrail. Mr Moorby was aware that Bourne was working on the Crossrail project and was interested in working on it.
191. With regard to the email sent by Mr Moorby dated 5 June 2017, Mr Ashton confirmed that he had received the email. Mr Moorby contacted him and asked him to delete the email as it had not been intended for him.
192. Mr Ashton stated that he had been introduced to Mr Patel by Adrian Shaw. He kept in contact with Mr Patel to see if there was any opportunity for Bourne to obtain work supplying contractors.
193. Mr Ashton stated: *'I recall that I specifically spoke to Mr Goodchild in early 2016 (not long after I met Mr Patel) about my introduction to Xrail and that I was exploring the opportunities for Bourne because I was introduced by our mutual friend Adrian Shaw'*.
194. In March 2016 Mr Ashton met with Mr Patel and Mr Strickland.
195. Mr Ashton arranged a meeting with Mr Patel and one of his colleagues in order to discuss opportunities for the companies to work together. Mr Hall and Mr Rockliffe were also at the meeting which was held at the Runcorn office. The meeting was positive and he considered there was a good opportunity for Xrail to pursue contracts in Dubai with the support of Bourne.
196. Mr Ashton describes providing information and contact details to Mr Patel so as to improve the working relationship between the companies.
197. When cross-examined Mr Ashton said that he had a number of meetings with Mr Patel. He had attended a corporate event arranged by Mr Patel. There was less contact with Mr Patel from around April 2017 because the Dubai bid project had gone quiet due to developments in the Middle East.
198. Mr Ashton strongly denied the suggestion that he provided confidential information to Xrail. He said that he did receive a text from Mr Patel asking him for the average weekly or day rates for an overhead line engineer and S&T operative at Network Rail. He stated that he responded to confirm the hourly rate. These rates are standard industry pay rates for contractors and are not confidential. On 26 April 2016 he sent an email to Mr Patel which attached the Colas rate table for S&T. This was sent as part of the ongoing discussion about Dubai and was intended to inform Mr Patel of the industry rates for contractors. The rates are provided to any supplier in the industry who needs them.

199. Mr Ashton considered that it had been unfortunate for the Chairman to appoint his son to the position of Operations Director. He was appointed on a large salary at a time when there was a concern to control staff costs and people were being made redundant.
200. A Board meeting took place on the 5 June 2017. Mr Ashton explained there was disagreement as to the approach that should be taken in respect of the management of the company. At the meeting Mr Shipley and Mr Goodchild had concerns about the systems and procedures in the office, rejected flexible working arrangements and confirmed an office move from Runcorn to Manchester. Mr Ashton asserted that he emphasised that key staff might leave. Mr Shipley was of the view that *'the business should not be held to ransom by individuals'*.
201. At paragraph 26 of his third statement, Mr Ashton explained that he did not include the Xrail lead in his financial forecast because he did not include anything which did not have certainty. For the same reason he had not included AMEY.
202. Mr Rockliffe was selected for redundancy because of a downturn in the S&T work. His salary represented a cost to Bourne and the Carillion work had reduced.
203. He denied that the providing of Mr Hall's CV had been the start of an attempt to divert work from the First Claimant.
204. Mr Ashton stated that all telephone calls were made in the performance of his ordinary duties.
205. In summary Mr Ashton states: *'I have been unfairly treated and accused of significant wrongdoing by the applicants without any justification. There is no evidence that I was encouraging people to leave the applicants and join Xrail or any other competitor... It appears that the applicants have completely misinterpreted a small number of documents and concluded that I have acted improperly while the opposite is the case'*.
206. He further stated that he acted in the best interest of the company. He tried to convince Mr Shipley not to impose redundancies, tried to prevent key staff leaving, facilitated increased rates with Colas and worked to secure new work in Dubai via Xrail. Mr Ashton highlighted that only a week before he was suspended he had a meeting with Mr Moorby of Colas in order to discuss Bourne supplying contractors to the Birmingham Metro project.

### **Adrian Shaw**

207. Mr Adrian Shaw, the Senior Vice President of AECOM, explained that he was giving evidence in a personal capacity. He said that the First Defendant, Rob Ashton, had been a personal friend for over 25 years. Mr Ashton used him as a sounding board. He said that he also had a parallel relationship with Bernard Goodchild.
208. He believes that it was in around January 2016 that he introduced the First Defendant to Munir Patel. He was aware of the plans that Xrail had to carry out work in Dubai and the Middle East. He was aware that the plans could not be resourced directly by Xrail and he thought this provided an opportunity for the Claimants.

209. Mr Shaw was asked about an exchange of text messages on 29 September 2016 between himself and the First Defendant. The First Defendant had stated: *'I'll have to make other plans'* and Mr Shaw replied: *'Munir'*. The witness stated that he was merely making a suggestion if things did not work out at Bourne Rail. He emphasised the importance in the rail industry of a relationship being built upon trust.
210. Mr Shaw said that he had not been told about the operatives leaving and he would have had no interest in being told of the situation.
211. Mr Shaw considered any suggestion that he was involved in a conspiracy or was in any sense complicit to be offensive.

### **Anthony Hughes**

212. The evidence of Anthony Hughes was admitted as hearsay on the ground that he was medically unfit to attend the trial. He was employed by Colas Rail Limited from 2012 to January 2017 as the Head of Projected Services. He was asked to comment upon the rates which the First Defendant provided to Xrail. He explained the rates were provided to any enquiring party. The rates were communicated openly. He said that he wanted to avoid a 'Dutch auction' situation with the labour supply companies so it was important that the rates were not a matter of secrecy. The information about the Colas rates sent by Mr Ashton to Xrail was not information that he would have considered sensitive or confidential at the time or now.

### **Steven Moorby**

213. Mr Steven Moorby is employed by Colas Limited and is responsible for the resourcing team. Mr Moorby states that it was around March 2017 that he began to work more closely with the First Defendant. Colas went through a restructure which involved a new supply chain. The First Claimant was not on the supply chain list. It was necessary to work with Mr Ashton to get the First Claimant onto the list.
214. Mr Moorby was asked to consider an email dated 26 May 2017. He stated that the purpose of the email was to help Mr Ashton and the Claimants sort out their problems. He stated that in his response he made an offhand comment that *'once we are sorted out you can get me a job on Xrail'*. Mr Moorby was cross-examined in relation to the issue but insisted the reference to 'on Xrail' is a reference to working on 'the Cross Rail Project'. He also made the point that if he had wanted a job at a company he would not have said he wanted to work 'on' that company. He described the suggestion that he should want to work for Xrail as ridiculous. He is a permanent PAYE employee. During his 30 years in the industry he has always been such. He would not take on a role as a contractor which is the type of job that might be available at Xrail.
215. He was also asked about an email dated 5 June 2017 which he sent to the First Defendant. He stated that Xrail had been on the list for some time and he had assumed that they had provided all necessary documents to remain registered suppliers. The email was intended for Mr Patel and was to chase them up on a credit check. The witness explained that he accidentally sent the email to the First Defendant. The First Claimant was one of six suppliers that he was dealing with at the time. Mr Moorby stated that he realised that he had sent it to the wrong person. He telephoned and

explained to Mr Ashton that the email was not meant for him. Mr Moorby insisted it was a situation of using ‘sausage fingers’ on the telephone and he denied being dishonest.

216. Mr Moorby stated: *‘I confirm that I had no dealing or contact with Mr Ashton in relation to Xrail being an approved supplier’*.
217. Mr Moorby was also aware that Mr Hall was becoming ‘generally fed up’ with the amount of work he was being asked to carry out by the Claimants. Mr Moorby explained that he asked Mr Hall if he was interested in signing up with Colas. The rates of pay were not good enough so Mr Hall declined. Mr Moorby also recalled speaking with Mr Hall, whilst he was still at the Claimant, about the opportunity for the Claimants to supply contractors to work in Dubai with Xrail.

## **Mr Rubin**

218. The solicitor acting on behalf of the First Defendant outlined his Internet research into the use of abbreviations to describe Crossrail.

## **Ian Rockliffe – The Second Defendant**

219. Mr Rockliffe worked for the Second Claimant from 3 June 2013, until he was made redundant on 17 March 2017. His role was to resource staff. He would meet the client and discuss their supply needs for any given project. The First Claimant would supply them with the manpower they needed with the First Claimant being their sponsor or sub-sponsor.
220. His main relationship was with Carillion. They are one of the main engineering companies and do much work for Network Rail. When they needed operatives they contacted Mr Rockliffe who described having a wide network of subcontractor contacts in the industry.
221. It is important to note that Mr Rockliffe had a strong relationship with the 20 operatives or subcontractors who he worked with and regularly placed. It is common for workers to move on and off jobs in small gangs. The subcontractors always needed work and they would work for an agency or sponsor who could provide the work. They were free to work wherever they wanted provided they were sponsored and they would often follow the work of the gang they worked in.
222. Mr Rockliffe described that in December 2016 he became aware that he may be made redundant. He was not surprised because the S&T work had been very quiet. Even before this time he had thought about leaving and had made enquiries.
223. The witness confirmed that there was a meeting in early January 2017, at which Munir Patel told those attending about projects both in the United Kingdom and the Middle East. This was an opportunity for the Claimants and Mr Rockliffe to provide information to demonstrate intent.
224. Following that meeting Mr Rockliffe described how he used his LinkedIn account to attract available contractors and thereafter forwarded suitable CV’s to Mr Patel for consideration. He forwarded approximately 12 CV’s. There was only one for

someone who had previously worked for Bourne Rail. He also emailed a matrix showing the subcontractors he worked with and their competencies.

225. Mr Rockliffe states: *'I was not trying to get staff away from Bourne. If the Bourne supply arrangement with Xrail were to work out and I thought there was potential for Carillion and Xrail to work together via Bourne'*.
226. Mr Rockliffe considered his future to be uncertain and he was still minded to leave the Claimants. Mr Rockliffe described that in December 2016 he met with Vital and another supply agency to discuss work opportunities.
227. He described how he contacted John Woods of Carillion to talk to him about the situation. On 25 January 2017 he contacted Mr Woods by telephone. He accepted that he made a number of calls to Mr Patel on the morning of 25 January. Mr Rockliffe described how he told Mr Woods that he would probably be leaving Bourne and that he had met a company called Xrail. Mr Woods said that he did not want to lose the staff already working on Carillion projects. Mr Rockliffe replied using words to the effect of *'I could not make the workers stay or leave depending on where I worked'*. When pressed Mr Rockliffe said he did not know why Mr Woods had made a reference to migration of staff in the email.
228. Mr Rockliffe described that it became widely known that he was being made redundant. The First Defendant said to him *'I hope you realise this isn't coming from me'*. Mr Rockliffe stated that he did not at any time discuss a group move with the other Defendants.
229. Mr Rockliffe did not accept that a 20 minute conversation on 31 January with Mr Patel was about the migration of the Carillion work.
230. Mr Rockliffe described how in early February he telephoned Mr Patel to enquire about work and informed him that he was being made redundant. He outlined to Mr Patel the drop-off in work at Carillion so that he did not have any false expectation. At that time Mr Patel did not commit to anything. It was two days later that Mr Patel telephoned and offered employment.
231. Mr Rockliffe accepted that he did discuss with Mr Woods of Carillion the possibility of Xrail being on their list of approved suppliers. He said he did not know what he was discussing with other Defendants in telephone calls on that day.
232. He attended a meeting with Carillion on 2 March 2017 at which Mr Patel gave a presentation. When cross-examined he accepted that there was no mention of this meeting in his statement. He said that when he made his statement he had forgotten about the meeting. He did not know why Mr Ashton had telephoned him before and after the meeting.
233. Mr Rockliffe stated that even after he was made redundant he did undertake some contractor work through Bourne who remained his primary sponsor. Mr Rockliffe described how he also continued to help the Claimants to cover resourcing. Sean Oliver was fully aware of the situation. He made sure operatives knew what job they were on and where they had to work.

234. It is accepted by Mr Rockliffe that on 6 April 2017 he sent an email to Mr Woods at Carillion to see if he could work with Carillion via Xrail. At this time he was no longer employed by the Second Claimant.
235. Mr Rockliffe accepted that on 14 April 2017 he emailed the Xrail induction pack to numerous subcontractors. He pointed out that they were not ‘Bourne Rail workers’ but were independent subcontractors free to work with any supplier they wanted to. He stated ‘*at the time I emailed out the Xrail pack I thought it was up to them if they wanted to work via Xrail but at least the pack was then done and they could start at any time if they had been Xrail registered*’.
236. He could not recall the circumstances of telephone calls on 21 and 28 April 2017 with Mr Patel.
237. The witness also outlined how he was contacted in June 2017 by Sean Oliver the First Claimant’s Compliance Manager. He wanted to know what it was like working at Xrail. Mr Oliver had enquired about the possibility of work at Xrail. On 6 June 2017 Mr Oliver sent a message to Mr Rockliffe saying that he had spoken to Mr Patel and that he could not wait to get out of Bourne.
238. On 10 June Mr Rockliffe sent an email which was ‘a request to use the lads’. At the time he was at Xrail and wished to use operatives to carry out work for Carillion. He said he could easily have obtained other people to do the work if necessary. Mr Oliver gave permission. He did not tell him that approval had been given by Mr Ashton. In his witness statement at paragraph 74, Mr Rockliffe described that on 26 July 2017 he had a telephone conversation with Mr Patel. The Injunction papers had been served. Mr Rockliffe explained that there was nothing untoward and no skulduggery. The witness stated that after the meeting he received a dismissal letter. He believes the letter may have been a knee-jerk reaction to the legal proceedings. He has not received any further communication.
239. When cross-examined about the letter of termination Mr Rockliffe at first accepted that it contained a number of lies. He said that he had no discussion with Mr Patel before he received the letter, he had not been invited to a meeting on 25 July, he had not received a letter and he did not say he would leave with his resources.
240. The case was adjourned for the weekend. When Mr Rockliffe resumed his evidence on the Monday morning he explained that he had been unwell on the Friday afternoon. He said ‘*I had gone and couldn’t remember... I am a human being. I froze*’. He explained that it had been necessary for him to attend at hospital as a result of chest pain.
241. He then explained the circumstances of the meeting on 26 July. It was a phone meeting with Mr Patel. He was not sure where he was when he spoke on the telephone. Mr Patel was annoyed.
242. Mr Rockliffe said that since becoming employed by the Sixth Defendant, he had worked in London and Scotland. There had not been any discussion about him working in the Middle East.

243. When cross-examined he said that he returned his computer. He had experienced trouble with it ‘freezing’. He was not aware of any problem with the hard drive.

### **Steven Hall – The Third Defendant**

244. Stephen Hall outlined his responsibilities as an S&T manager. He described his excellent relationship with Colas Rail Ltd.
245. In January 2017 Mr Hall attended a meeting with Mr Ashton, Mr Rockliffe and Mr Munir Patel of Xrail. Mr Patel gave a short presentation about his plans to expand in the UK and in the Middle East. Mr Patel was interested in seeing if the Claimants could supply workers who would want to work in Dubai and Doha where his company were bidding for Metro projects.
246. In 2017 he experienced increasing difficulties caused by poor administration. The Claimants had made Mrs Boswell redundant. She was the Resource Administrator who assisted with payroll rosters and other S&T related administration. Mr Hall explained how he had made Paul Goodchild aware of the increasing problems and lack of administrative support. Mr Goodchild had not been sympathetic.
247. Mr Hall states: *‘I would not have left Bourne if I had the support that I required if they had delivered on the promises that they had made to me around the provision of administrative support.’*
248. Mr Hall stated that by early May 2017 he was determined to find work elsewhere and move on from Bourne. Mr Hall explained that he did not agree with Paul Goodchild being brought in as the Operations Director. They had recently made Mr Rockliffe, Mrs Boswell and Mr Owen redundant.
249. In mid-May 2017 Mr Hall contacted Mr Patel of Xrail to see if there was any possibility of Mr Hall working through Xrail. Afterwards Mr Hall received a verbal offer to join Xrail as a contractor working as S&T manager.
250. Mr Hall explained that because there had been no improvement he sent the email of 26 June 2017 to say that his last day of working at the Claimants would be 30 June 2017. When challenged, Mr Hall outlined the difficulties that he had experienced on a regular basis. He said everyone knew what was happening and that there were problems in the company. In his opinion, the Claimants had taken away his home life.
251. On 30 June 2017 the Colas resource team contacted Mr Hall to ask whether he was working for Bourne Rail or Xrail. He responded saying that he would be working via Xrail.
252. Mr Hall stated that on 26 July 2017 there was a telephone meeting involving Mr Hall, Mr Patel and Mr Vinod Rajani. He subsequently received a letter dated 26 July 2017 from Xrail headed ‘Notice of Termination from Xrail’.
253. Mr Hall accepts that when he left the First Claimant he returned his telephone. He subjected it to a factory reset because he had much personal information upon the telephone.

254. An important part of the Claimants' case against the Third Defendant involves a consideration of a number of emails which have been recovered.

### **Emails of the 17 and 20 January 2017**

255. On 17 January 2017 Mr Patel emailed Mr Rockliffe asking him to fill in resources on a competency matrix 'to support the LU project'. On the same day Mr Rockliffe forwarded Mr Patel's email to Mr Hall.
256. On 20 January 2017 Mr Hall emailed to Mr Patel a completed version of the competency matrix. Mr Hall explained Bourne Rail were making a bid for a London Underground project which could not have been obtained by Bourne Rail. He was supplying the names of subcontractors who he thought would be prepared to work through Bourne if the bid was successful.

### **Email from Mr Moorby to Mr Hall on 1 March 2017**

257. On 1 March 2017 Mr Moorby sent the Third Defendant some bid documentation. Mr Hall's case is that the documents were provided to him to assist in the preparation of a Volker Thales bid.

### **Emails of the 1 March 2017 and 2 March 2017 Labour rates**

258. On 1 March 2017 Mr Patel sent to the Third Defendant a spreadsheet for rates for work in London. The spreadsheet was titled 'Thales'. Mr Hall returned the spreadsheet completed. He said the rates related to potential work on the London Underground. The rates were the rates that would have been charged for providing the operatives to work on the project if the bid was successful.

### **Exchange of emails on 6 and 7 March 2017 between Mr Patel and the Third Defendant**

259. On 6 March 2017 Mr Patel forwarded to Mr Hall an email exchange between himself and Mr Moorby of Colas about getting Xrail on the Colas approved list. Mr Hall did not know why this had been sent to him and appears to have taken no action in relation to it. It was forwarded by him to his Bourne email account.
260. Mr Hall accepted that he forwarded script to Mr Patel for inclusion in the London Underground bid. The precise wording was used in the London Underground/Volker bid document.
261. Mr Hall accepted that he asked Mr Patel for a registration pack. He explained that identified subcontractors were very unhappy working through the Claimants and wished to move on as they were entitled to do.

### **Email of 25 March 2017 providing details of equipment**

262. On 25 March 2017 Mr Hall forwarded certification documents to Mr Patel. The certificates relate to the certification of equipment which is owned by the individual operative. Their equipment must be certified before it can be used on any rail work.

Mr Hall maintained that the documentation was sent so that Xrail could assess whether Bourne could support the intended Xrail projects.

263. Mr Hall was also asked about his telephone contact with other alleged conspirators and maintained that it was for work related purposes.

### **Michael Healey – The Fourth Defendant**

264. Michael Healey was unable to attend to give evidence at the trial and I have fully and carefully considered his statement.
265. He commenced employment on 22 April 2013 in the role of Resource Manager. He accepts that in his role he had access to charge and pay rates for operatives. He sometimes worked overtime weekend shifts as an operative for the S&T team. He reported to Mr Noone and had little contact with the First Defendant.
266. Mr Healey stated that *‘the allegation I conspired with Mr Hall and Mr Rockliffe (and the other defendants) is entirely unfounded.... I deny I sent emails of a confidential nature to my private address or that I did anything in collaboration with the defendants to harm Bourne’*.
267. He described that the service of the injunction papers upon him had brought about a deterioration in his health, and had brought about worry for himself and his family.
268. Mr Healey stated that he left Bourne for one reason only and that was because the place was in chaos. There were numerous contributing factors to this which culminated in the company being a total mess. He believes this was contributed to by the loss of Ms Boswell who had worked as the S&T resourcer. Following the loss of Ms Boswell it was necessary for Wayne Owen, the Office Manager, to support the S&T team. He described that after Mr Owen was made redundant in March 2017 *‘it was really chaotic’*.
269. Mr Healey stated: *‘it got to the point where I did not want to get up and go to work and I began to feel quite depressed.... I resigned on 3 May 2017. I could not face the role any more I was not happy and it was affecting my life out of work’*.
270. Mr Healey explains that he did not discuss his decision to resign with Mr Ashton, Mr Hall, Mr Rockliffe or anyone from Xrail. He had no cause to. It was a private matter. Mr Healey outlines that following his retirement, he intended to carry out some shifts on the tracks if the opportunity arose. He described approaching Mr Rockliffe at Xrail and also Wayne Owen at International Manpower Limited. On 27 June 2017 Xrail became his primary sponsor. Apart from attending a meeting at which Mr Munir Patel spoke, Mr Healey has had no contact with him.
271. Mr Healey explained that in December 2016 he was provided with a new Bourne laptop. The new laptop had not been set up properly and so he was not able to access the Bourne server or work platform. He had requested assistance but this had not been provided.
272. In such circumstances Mr Healey sent work materials to his private Hotmail address. He had no alternative because he could not access the Bourne web network and email

system from his home. Mr Healey highlighted that he was open about what he was doing and did not try to conceal it in any way. He describes how as the Resource Manager, he needed to know where the operatives were, what shifts they were on and where any gaps in the rota were so that he could arrange cover.

273. Mr Healey accepted that he forwarded the list of rail operatives which had been obtained by Sean Oliver. He intended to use the information to try to get more men for the First Claimant's work. For the same reason, he sent contractor CV's to his account. He also needed the email addresses of the subcontractors so that he could contact them if necessary.
274. At paragraph 46 of his statement Mr Healey states: *'I have never sent anything from my Bourne Rail account or information that belong to Bourne to Xrail, to Mr Patel personally nor to Rob Ashton, Steve Hall or Ian Rockliffe'*.
275. The witness also outlined his cooperation with the Claimants' solicitors so that they could access his Hotmail account. He stated that he has cooperated with them willingly in attempt to clear his name. He stated: *'I have done nothing wrong and have nothing to hide. I am shocked that I am still a party to these proceedings'*.
276. Mr Healey has given a detailed response in respect of each email which has fallen for consideration. I have carefully considered the responses but do not repeat them.

## **Munir Patel**

277. Mr Patel asserted that the claim is entirely without merit. Xrail was a potential client of the Claimants, not its competitor. Mr Patel stated that he openly presented to the First Defendant a significant potential opportunity for the Claimants. Xrail was developing into the Middle East and the Claimants had an opportunity to earn significant income from any projects obtained in the Middle East.
278. Mr Patel believes that the Claimants have totally misunderstood the situation in their own business.
279. Mr Patel explained the structure of his companies and that there was no basis upon which to bring any claim against the Fifth Defendant. The active trading company was Xrail Group Ltd and they have entered into provision of service agreements with Colas and Carillion.
280. Mr Patel confirmed that his first contact with the First Defendant was in April or May 2016. At that time Xrail Group was looking to identify suppliers through which to source operatives to work on possible projects in the Middle East.
281. After his company restructure there was a period of time during which he may still have used a Xrail Solutions business card but he was acting on behalf of Xrail Group. Emails forwarded to the Xrail Solutions email address were forwarded to the Group address.
282. He explained why a career in the rail industry is based upon trust. The consequences of getting something wrong can be catastrophic. Mr Patel explained that he was a respected person in the rail industry. He established his reputation over a period of

- time. His reputation is important and he would not jeopardise that reputation. He has been successful in the United Kingdom, and wishes to develop into the Middle East where he had carried out a contract in Dubai.
283. He did not consider the Claimants to be a competitor. They are involved in supplying workers. The Sixth Defendant has the ability to develop full projects and only supplies workers as part of the business.
284. On 4 June 2016, Xrail Group Ltd entered into a Frame Work Agreement with Colas Rail Ltd. This was pursued entirely on his own. The rates that he put forward were those which had been provided by Mr Hughes. He explained that Colas rates are made available to be used by supply companies.
285. The email from Mr Ashton of 26 April provided an indication of the amount that Bourne would charge for supplying operatives.
286. Mr Patel stated that he had only one formal meeting with the Claimants which was held at their Runcorn office. He made a presentation at the meeting in which he described his plans.
287. He outlined that, as part of his preparation of a bid for work in Doha, he had received the CV for Mr Rockliffe and that for Mr Hall. The project would have required as many as 200 workers from the United Kingdom. Mr Rockliffe and Mr Hall provided CV's of workers to back up their assertion that they were able to provide operatives.
288. Mr Patel described being active submitting bids for work on the Dubai Metro and for a London Underground Volker Rail project. In respect of the London Underground project Mr Patel discussed pricing and the wording of the bid.
289. Mr Patel stated that he was not aware of any contact between Mr Rockliffe and Mr Woods of Colas until he was separately contacted by Mr Woods.
290. The employment of Mr Rockliffe arose following approaches by him. On 14 February 2017 Mr Rockliffe contacted Mr Patel to ask if there was any opportunity for employment. At that stage Mr Patel tried to persuade Mr Rockliffe to become a contractor. Mr Rockliffe was insistent that he only wanted to seek employment. Mr Patel stated that he had no further contact with Mr Rockliffe until mid April 2017 when he telephoned him to see if he was still interested in joining Xrail. Mr Patel thereafter confirmed to Mr Rockliffe that he would employ him. On 8 May 2017 Mr Rockliffe started working for Xrail Site Ltd. On 6 June 2017 the first shift of work for Carillion was undertaken.
291. Mr Patel stated that in May 2017 he was contacted by Mr Hall. Mr Hall explained that he had become very unhappy at Bourne as a large number of people had been made redundant, morale was low and he believed he had been overworked. On either 23 June, or 26 June 2017, Mr Patel recalls being contacted by Mr Hall who said that he was leaving and asked whether Xrail would take him on. Mr Patel states that he was happy to do so.
292. On 27 June 2017 Xrail entered a new agreement with Colas Rail Limited.

293. Mr Patel insisted that his companies had done nothing wrong. He believes the First Claimant decided to let Mr Rockliffe go because the Carillion work was making a loss. It is understandable that Carillion would wish Mr Rockliffe to keep working for them. Xrail had previously worked with Carillion and Mr Rockliffe came to deal with Carillion on behalf of the Xrail Group.
294. Mr Patel stated that the certificates Mr Hall sent to him on 25 March 2017, all related to operatives who the Claimants were putting forward for another part of the Doha Metro project. On 10 April 2017, copies of the Sentinel cards of Mr Hall and Mr Rockliffe were provided again in relation to the Middle East project.
295. Mr Patel confirmed that bids had been submitted in May and June in respect of projects in Doha and Dubai.
296. Mr Patel asserted that he had had no dealings at all with Mr Healey, the Fourth Defendant. He states: *'the suggestion that Mr Healey brought confidential information from Bourne to Xrail is complete nonsense'*. He is unaware of any communication with Mr Healey prior to him becoming sponsored by the Sixth Defendant.
297. The Fifth Defendant was served with the initial application for the injunction. Mr Patel stated that he was shocked. He described organising a telephone meeting with both Mr Rockliffe and Mr Hall.
298. He believes that he called Mr Rockliffe and that he then called him back. There is a record of calls on 26 July at 16:13 and 16:29. There is also a record of a call to Mr Hall on 25 July at 14:38 for 24m 23 seconds.
299. Mr Patel outlined how he considered the explanations which he was given. He could not work out if they were telling the truth. The decision was taken to terminate their individual arrangements from a later date so as to afford the opportunity to fully consider the situation.
300. The termination letter for each was prepared by Mr Rajani who is not legally qualified. Each letter is in similar terms. The reference to 'our meeting' was a reference to the meeting by telephone. The reference to the Particulars of Claim was a reference to the injunction claim. Mr Patel accepted that he did not physically hand over any document.
301. Mr Patel denied when challenged that the document was a fabrication. It was put to him that it was part of a cover-up to make it look as if he was shocked. Mr Patel resolutely denied the allegation. The witness pointed out that the letter was not personally signed by him. He believed that it must have been sent out a few days after the telephone meeting.
302. Mr Patel denied providing 'a lifeboat' for Mr Ashton. He rejected the suggestion that he had spent eighteen months obtaining the work of the First Claimant and the migration of their employees. Mr Patel stated that there had never been any contemplation that the First Defendant would work for any Xrail company.

## The Issues

303. The critical issues can be summarised as follows:

- (1) Did each Defendant agree with another Defendant or Defendants to pursue an unlawful common design? Were the actions of a defendant part of a conspiracy and carried out in furtherance of a conspiracy?
- (2) Were the alleged actions intended to cause damage and did they cause damage or loss to the Claimants?
- (3) Is the proper Corporate Defendant Xrail Solutions Ltd, the Fifth Defendant, or Xrail Group Ltd, the Sixth Defendant?
- (4) Was it lawful to dismiss the First Defendant summarily without notice?
- (5) Did the First, Second, Third or Fourth Defendants pass any confidential information?
- (6) Did the Fifth or Sixth Defendants receive any confidential information?

304. I am grateful to Counsel for identifying the issues in their closing submissions. There are many other issues which have been identified and which arise in connection with the making of factual findings and the interpretation of the evidence.

## Discussion and Findings

### My Approach

305. In a case of this type it is necessary to take an overview of all of the evidence and also consider the part of an individual defendant. The need to do so is underlined by the serious allegation made against each Defendant. In taking this approach I keep in mind the considerations highlighted in the case of ***Group Seven***.
306. On behalf of each Defendant it is submitted that the case has changed significantly over the course of the hearing so that it has become unfair. My attention is drawn to the fact that the Claimants now rely upon matters which have not been pleaded. It is submitted that in this case we find an ever-expanding case theory. The conspiracy has enlarged during the trial and even in the Closing Submission. It is asserted that there is now an alleged conspiracy not only in relation to S&T work but also the Overhead Lines Work. I remind myself that in the Claimants Opening Skeleton Argument, it is stated: *'this will be a speedy trial in which the performance of the Defendants during cross-examination is likely to be determinative of the outcome. Each has given explanations of the incriminating documents that the Claimants have been able to discover. The truthfulness of those explanations now falls to be determined by the Court'*.

### The correct Corporate Defendant

307. The Claimants submit that Xrail Solutions was a party to the conspiracy. It is submitted that Mr Patel was acting on behalf of Xrail Solutions. In particular:

- (1) The email address given by Mr Patel to Mr Strickland at the first meeting was an Xrail Solutions address.
  - (2) Mr Ashton contacted Mr Patel at an Xrail Solutions email address.
  - (3) Mr Patel gave an Xrail Solutions business card.
308. I am unable to accept the submission of the Claimants. In my judgment it is clear from all of the evidence that at the relevant times Mr Patel was acting as a director of Xrail Group Limited. Mr Patel gave clear evidence that he was acting on behalf of Xrail Group Limited. His evidence is supported by the documentary evidence which shows that it was Xrail Group Limited who entered into the approved contractor agreements with Colas and Carillion.
309. It is common ground that only approved contractors can provide services to the main contracting companies. It was only Xrail Group who became sponsors of individual operatives to carry out the work for the contractors.
310. I note that the provision of the email address to Mr Strickland was before the restructure of Xrail Solutions Limited. It was some time before the main matters that fall for consideration.
311. In any event I accept the evidence of Mr Patel as to his use of the business card and the forwarding of emails to Xrail Group Limited.
312. During the hearing Mr Quinn asked questions concerning the financial status of the companies and the type of accounts that they had filed. This information does not help me to decide on behalf of whom Mr Patel was acting at the relevant time.
313. I find that at the relevant time Mr Patel was acting as a director of Xrail Group Limited.

### **Michael Healey**

314. In his closing submission Mr Quinn stated that because of the illness of Mr Healey, the Claimants had been unable to fully explore the apparent desire of the conspirators to follow up on the diversion of the S&T work by ensuring that the same thing happened to the Overhead Lines Work.
315. It is submitted that I should be satisfied on the basis of the evidence given by Mr Shipley, that there was no bona fide reason for Mr Healey to have been sending the documents to his personal email address.
316. It is important to note that there is no evidence of the documentation being supplied to the Fifth and Sixth Defendant, or of it being used by Mr Healey for a clear non-work purpose.
317. There is no evidence that Mr Healey knew Mr Patel or had any contact with him during the relevant period. His first meeting with Mr Patel seems to be after Mr Healey resigned from his position with the Claimants.

318. No email communications or other documentation has been produced to lend support to the assertion that he was party to any conspiracy.
319. The claim that there must have been a plan to divert the Overhead Lines work is, in reality, founded upon speculation.
320. I have carefully assessed the evidence given by Mr Healey in his witness statement in the light of the matters helpfully identified by Mr de Silva in his submission. I keep in mind that the Claimants have not been able to ask questions of Mr Healey. There is little to undermine his explanation.
321. Taking all matters into account I find on the balance of probabilities that Mr Healey was not acting outside his employment. The claim against him is not made out.
322. I am unable to accept the submission made on behalf of the Defendants that if the claim against one defendant failed, the claim against all should fail. The claim based upon conspiracy is obviously brought against all Defendants. In my judgment the position of Mr Healey has always involved individual considerations. My finding in relation to Mr Healey does not fundamentally undermine the allegation that the other Defendants were involved in a conspiracy in relation to the S&T work. Accordingly, it is necessary and appropriate to consider the evidence in respect of the other Defendants.

### **The alleged diversion of the S&T work and operatives**

323. Mr Quinn submits that the evidence of a conspiracy is overwhelming. He asserts that there was a determined effort to divert the S&T work. In his closing submission he describes the various phases of the conspiracy. The phases reflect his analysis of the evidence as set out in the Claimants' Closing Chronology.
324. On behalf of the Defendants it is generally asserted that Mr Shipley and Mr Goodchild have limited knowledge of the rail industry and did not properly understand the operation of Bourne Rail. It is stated that many of the actions taken were to build up the relationship with Mr Patel and the Xrail Group for the benefit of Bourne Rail. It suggested that after the departure of Mr Rockliffe and Mr Hall, it was natural and to be expected that their respective teams of operatives would follow. It is asserted that as a result of the operatives leaving, the Claimants have carried out an investigation and found an explanation in a supposed conspiracy which did not in fact exist. Mr de Silva submits:

“What Bourne appears to have done is take the fact that S&T operatives went to Xrail and reverse engineered a conspiracy theory from this. The reality is that there were relatively few S&T operatives and it was a likely consequence of Mr Rockliffe's redundancy and Mr Hall's later resignation that operatives would follow them to Xrail. This in no way suggests that they acted together, still less as part of an unlawful conspiracy involving the other defendants.”

## The introduction of Mr Patel to Mr Ashton

325. I accept that in early 2016 Mr Shaw introduced Mr Patel to Mr Ashton. His purpose was to provide a business opportunity to Bourne Rail where his friend Mr Ashton was the Managing Director. He considered that the First Claimant might be able to provide operatives and support Mr Patel in carrying out future project work.
326. I accept that Mr Ashton mentioned this opportunity to Mr Bernard Goodchild who is the Chairman of the First Claimant. Mr Ashton initially gave this account on 5 September 2017 in his disciplinary interview. If this is disputed it would obviously have been possible for Mr Bernard Goodchild to give evidence about this aspect of the case.
327. On behalf of Mr Ashton it is stressed that the pleaded claim is limited to 3 matters only. These allegations are also the basis of the complaint by Mr Shipley in his witness statement. It is asserted that the Claimants make their closing submission on a much wider basis despite the requirement that the alleged facts should be pleaded from which an inference of dishonesty is to be claimed.
328. Mr Solomon contends that for the Claimants to establish their case it is necessary to establish that each defendant was not telling the truth and that others including Mr Moorby, Mr Hughes and Mr Shaw were also not telling the truth.
329. I now consider a number of the acts identified in the Amended Particulars of Claim. I have altered the order for ease of consideration.

## A suspicious number of telephone calls

330. It is claimed that there are '*a suspicious number of calls between the defendants and Mr Patel from at least as early as December 2016. In the case of Mr Ashton he made almost 50 calls to Mr Patel in the period from 1 December 2016 to 1 March 2017*'.
331. The frequency of contact and the number of telephone calls must be considered in the context of the actual relationship between those involved. The Claimants have asserted that the Sixth Defendant was a competitor. I find their areas of work to be different. The First Claimant is a specialist employment provider. The Sixth Defendant had the capability of designing and delivering a rail project. Any competition was limited.
332. Mr Patel described his wish to expand into the Middle East. I accept his evidence because it is well supported. He has contacts in the Middle East. He identified this as a possible work area and has made determined efforts to increase the presence of his company in the market by, for instance, attending trade fairs.
333. It is clear that the Sixth Defendant had submitted bids in May and December 2016 for the Doha Metro, and in February and June 2017 for the Dubai Metro.
334. Following the introduction by Mr Shaw it makes sense that the First Defendant would wish to pursue the opportunity that had arisen. I find that it is in this context that meetings did take place between the First Defendant and the Sixth Defendant. It is,

therefore, understandable that there would be communication as opportunities developed.

335. Each Defendant relies upon their telephone for communication. They make many telephone calls chasing opportunities and dealing with situations. In such a context, I do not consider the actual number of calls to be particularly large. The Claimants maintain that the calls are suspicious. I have carefully considered the chronology in relation to other identified events. For example, I have considered contact before and after the meeting on 1 March 2017. The calls do not allow me to make any finding of dishonesty in the context of those events. I do not consider it reasonable to expect a defendant to be able to give an account in respect of each call.
336. On behalf of the Claimants it is suggested that the account that the operatives were to be supplied to work in the Middle East is nothing more than a fiction. I am unable to accept that submission. Mr Ashton and Mr Patel both described the opportunity which, if it had materialised, would have been of benefit not only to the Sixth Defendant, but also the First Claimant. In my judgment the communication with Mr Patel was to give him assistance and to establish the relationship between the First Claimant and his company. I note that Mr Hall had particular experience of working in other countries. He was aware of what would be needed in such a situation.

#### **The failure to keep Mr Shipley and Mr Goodchild informed**

337. Mr Ashton did not appropriately inform Mr Shipley and Mr Goodchild of the Xrail opportunity. The fact that it may have been mentioned to Mr Bernard Goodchild does not provide a full explanation. In my judgment Mr Ashton did not provide this essential information because he regarded Mr Shipley as a threat. Mr Ashton was also concerned about his own future. In these circumstances I have approached his evidence with some caution.

#### **The Rockliffe redundancy**

338. During the course of the trial there has been a focus upon the circumstances in which Mr Rockliffe came to be made redundant. It is suggested that he was chosen or identified for redundancy so that he would then be free to move to the Sixth Defendant.
339. On any view Mr Shipley was understandably concerned to reduce the operational costs of Bourne Rail. A number of people were identified for redundancy. At the time Mr Rockliffe was responsible for the Carillion work. The work from that company had substantially diminished. Mr Rockliffe as a cost could not be justified on the basis of the work being undertaken. Mr Ashton identified Mr Rockliffe as being someone who could be made redundant. As a business decision, it appears to have been a reasonable decision. There is no actual evidence to suggest that the decision was not made appropriately.
340. I do find that it was likely that the operatives who worked closely with Mr Rockliffe and considered themselves to be part of his team would follow him.
341. In my judgment the redundancies and in particular the loss of administrative support gave rise to real difficulties for Mr Hall and the operatives. I accept the evidence of

Mr Hall. He gave a realistic assessment of the situation. The problems were not of his making. Appropriate payments were not made, hotels were not booked, and timesheets were not dealt with efficiently. Mr Hall complained in emails dated 6 April 2017 and 19 April 2017. I accept that it was in early June 2017 that Mr Hall threatened to leave. He said he told the company the *'problems needed to be sorted quickly as otherwise I would walk away from the company'*. In my judgment Mr Hall chose to leave because of the ongoing problems that impacted upon his family life. It must be remembered that he was an independent contractor who could leave whenever he wanted.

342. I find that Mr Ashton did attempt to keep Mr Hall. It had been suggested by Mr Shipley that Mr Hall be made part of the bonus scheme. I find that Mr Ashton did mention this to Mr Hall. I note that Mr Hall was not receptive because he was aware of the difficulties in the company and the way in which he considered it to be moving.
343. The email sent on 29 June 2017 by Mr Ashton to Mr Hall creates a false impression. Mr Ashton referred to making repeated calls to try to speak to Mr Hall. It is apparent from the call data that he had spoken to Mr Hall during the relevant period. The only reasonable explanation can be that Mr Ashton was trying to give the false impression that he had done more to retain Mr Hall.

### **Email of 14 June 2017**

344. Mr Oliver described his receipt on 14 June 2017 of an email from the Second Defendant. The email contained a sub sponsor request for the authorisation of operatives to be able to work through Xrail. An authorisation had been given by Mr Oliver. In cross-examination Mr Oliver suggested, for the first time, that he had consulted the First Defendant who had directed him to grant the authorisation. He said that at the time he had been surprised and that *'it was bizarre to approve it'*.
345. The evidence is relied upon by the Claimants. I am unable to accept the evidence. I have not been given any reasonable explanation as to why the matter was not dealt with by Mr Oliver in his witness statement. I am unable to accept the explanation that the witness had forgotten, and had remembered only the night before. If the witness had considered the request to be 'bizarre' it is unlikely he would not have recalled it when making his statement. I also note that the witness gave a reluctant account as to how he came to obtain a list of rail workers, which was used for the benefit of the Claimants. He had also been subject to a disciplinary process and had received a warning from Mr Ashton.
346. His evidence of an offer of employment by the Sixth Defendant was also uncertain. He had not met Mr Patel at the time. He stated there was a verbal offer and he was to receive an extra £7000. It is not explained in his witness statement.

### **Specific matters concerning Rockliffe and Hall**

347. I now consider specific matters which concern Mr Rockliffe and Mr Hall. At paragraph 23 of his Closing Submission Mr Quinn submits: *'fundamental to the conspiracy was the need to include Mr Rockliffe and Mr Hall. These were the two individuals who could best secure the work (Carillion and Colas respectively) and the men (with Mr Hall comparing himself to 'The Pied Piper')'*.

## Email of 17 January 2017 and the Competency Matrix

348. It is important to note that this email was sent by Mr Patel to Mr Rockliffe with a request that he fill in resources on a competency matrix. I accept the evidence of Mr Patel that this was a London Underground/Thales/Volker bid. It was not an opportunity that could have been pursued by the Claimants. Furthermore, the email declares that it is for 'the LU project'.
349. Mr Rockliffe made no attempt to conceal his actions. He completed and returned the matrix. He then tried to identify operatives who were interested in working in the London area. He did this by making a post on LinkedIn. He requested anyone interested to send their CV to him at his Bourne Rail email address.
350. On 20 and 23 of January 2017, Mr Rockliffe did forward to Mr Patel a number of CV's from those who had expressed an interest. These were mainly from those who had independently applied and were not Bourne Rail operatives.
351. In my judgment the actions of Mr Rockliffe confirm his account that he was obtaining interest from operatives with a view to Bourne supplying S&T Labour on Xrail projects. The operatives could not be supplied directly to London Underground. I find this is the type of opportunity which was envisaged by Mr Shaw.

## The email of 25 January 2017 from John Woods

352. Mr Quinn asserts that: '*Mr Woods emails, first to Mr Rockliffe and then to Mr Patel the next day, remain the keys that unlock this case. Bourne Rail had its work and its workers secretly moved away from it*'. Mr Woods worked for Carillion and was responsible for arranging the supply of operatives to carry out their work. He regularly made arrangements with Mr Rockliffe.
353. It is clear from the face of the email that there had been a meeting between Mr Rockliffe and Mr Woods. I accept that by the date of the meeting, Mr Rockliffe must have been aware that he was at risk of being made redundant.
354. I have already found that those who were closely connected to Mr Rockliffe were likely to follow him when he was made redundant. It must be remembered that the Claimants had the benefit of operatives coming to their company with Mr Hall. When seen in this light I do not find it surprising that Mr Rockliffe was exploring possibilities should he be made redundant. The submission made by the Claimants has little regard to what was happening within their own company. The work was reducing. There were increasing administrative difficulties. Operatives were becoming unhappy.
355. Mr Rockliffe made no attempt to hide what was taking place. He forwarded the email to his Bourne email address.
356. Mr Patel told me he had not expected to receive the email. As a result he contacted Mr Woods. There is nothing to contradict his account.
357. The Claimants also draw attention to telephone calls on the day in question. There is no evidence as to what the telephone calls involved.

### **Email of 14 April 2017 - Induction packs**

358. On the 17 March 2017 Mr Rockliffe was made redundant. It was after he had left the employment of the Second Claimant that Induction packs were provided to those connected to him. This was to be expected as the consequence of his redundancy. It was a matter for an individual operative if he chose to change his Sponsor.

### **Labour rates**

359. On 1 March 2017 Mr Patel sent an email to Mr Hall. Attached was a spreadsheet titled: 'Thales'. In such circumstances, it appears most likely that this was in respect of the Thales Volker London Underground bid. There was no breach of confidentiality in providing the information which was generally available.

### **Approved contractor documentation**

360. The Claimants assert that on 1 March 2017 Mr Hall received documentation of the type required to become an approved contractor with Colas Rail Ltd and on 6 March 2017 Mr Patel forwarded to Mr Hall an exchange of emails between Xrail and Colas Rail Ltd. I am unable to accept the Claimants' submission. I accept the evidence of Mr Hall that the documents were provided in connection with a Volker Thales bid. The account is consistent with the evidence given by Mr Moorby who provided an example of average industry rates. Both witnesses stated that the bid was for the benefit of the First Claimant and there is nothing to rebut this.

### **The suggested script**

361. On 7 March 2017 Mr Hall emailed Mr Patel with some suggested script. The claim was brought on the basis that this email showed that Mr Hall was assisting Mr Patel *'in the preparation and drafting of a tender for work from Colas'*. I reject the submission. I find that the email related to a London Underground/Volker bid. The script was used in and can be seen in the London Underground bid document which was an Xrail opportunity.

### **The registration packs**

362. On 7 March 2017 Mr Hall also emailed Mr Patel asking for registration packs to be sent to him. Although Mr Hall describes wanting packs to keep his operatives interested. It is more likely that he was considering his own move at that time.

### **Documentation**

363. On 25 March 2017 Mr Hall forwarded Bourne Rail documentation to Mr Patel and details of equipment. I accept the evidence of Mr Hall that the equipment is owned by the individual operative and that the sponsor pays any costs in respect of its certification. The assertion by Mr Shipley that the equipment belonged to the First Claimant is incorrect. In any event Mr Hall persuasively explained that only a limited number of certificates had been provided to enable the assessment to be made as to whether the First Claimant could support Xrail projects.

### **The email of 26 May 2017 sent by Mr Moorby**

364. I carefully considered the way in which Mr Moorby gave evidence. A fundamental consideration is his veracity. His evidence is important in the consideration of a number of the allegations. In my judgment he was attempting to assist the court. His evidence was challenged but he stood by his account. He explained the basis upon which he had been employed for many years. He simply would not have wanted a job at Xrail.
365. The Claimants contend that in the email he was seeking a job at Xrail. To read the email in that way does not make grammatical sense. The witness states that it was a reference to work on Crossrail. Such an interpretation is consistent with the normal reading of the email.
366. I can find no justification for the suggestion that this email indicates that the First Defendant has performed an act or failed to perform an act in furtherance of a conspiracy.

### **The email of 5 June 2017 sent by Mr Moorby**

367. The email concerns Colas Rail Ltd approving Xrail as a supplier. Mr Moorby stated that the email was sent to Mr Ashton in error who he asked to delete it. Mr Moorby and the First Defendant both give a similar account. There is no evidence that Mr Ashton took any action in respect of the email.
368. It must be remembered that Mr Moorby is employed by Colas Rail. I can find nothing suspicious in the way in which he gave his evidence. The evidence is consistent with the evidence of the First Defendant.

### **The operatives choosing to leave**

369. Mr Shipley was not aware that when Mr Hall started to work with the First Claimant the operatives who worked closely with him also moved to the company. The First Claimant had the benefit of Mr Hall's family members and friends moving to join the company.
370. In my judgment it was almost inevitable that the operatives who were closely connected to Mr Hall would follow him when he moved on. I accept the evidence of Mr Hall. He said that he was not the Pied Piper: '*but where I went I could assume they would follow*'. He said I '*can't guarantee anything, but they were family and friends. But at the end of the day I couldn't stay there to keep the workers there*'.
371. Each individual operative is entitled to decide who they have as their sponsor. In my judgment, they left as they came. Seen in this way, I do not find that there was any conspiracy to bring about the movement of operatives.

### **Overview of Munir Patel**

372. I generally found the evidence of Mr Patel to be both clear and persuasive. He has built up the work of his companies over time. He undoubtedly has ambitious plans to

expand into the Middle East where some work is being undertaken. In my judgment it is unlikely that he would enter into a dishonest conspiracy in circumstances that would damage his reputation. His gain would have been limited.

**An attempt to mislead the court?**

373. Mr Patel told me that he was very concerned when the injunction application was served upon the Fifth and Sixth Defendants. He described invoking a disciplinary procedure. He required an explanation from both Mr Rockliffe and Mr Hall. He described arranging a telephone meeting with each. Following each meeting a termination letter containing the same wording was sent to Mr Rockliffe and to Mr Hall.
374. I have considered the telephone records and they are consistent with what has been described. The Defendants are entitled to rely upon the telephone records in the same way the Claimants seek to rely on other records.
375. I accept that criticism can be made of the recording of what took place. I accept the explanation that the letter was prepared by Mr Rajani who is not legally qualified.
376. In any event I consider that Mr Patel gave a straightforward and measured account in his evidence. He gave an explanation when he could and did not seek to explain matters which were outwith his knowledge. I accept his account. I accept Mr Rajani was involved. Mr Hall also confirmed the requirement to give an explanation. I then consider the prima facie unsatisfactory evidence given by Mr Rockliffe. His evidence changed. He told me that he found the experience of giving evidence very stressful. Some of his evidence was incorrect. He had to attend hospital during his evidence. I quickly formed the view that Mr Rockliffe was a hard-working man who found himself in an alien environment. I accept his final account. I find that there was no deliberate attempt to mislead the Court. There was a disciplinary process.

**Disclosure**

377. The Claimants have made complaint about the lack of disclosure on behalf of the individual Defendants. The Defendants maintained that they have given the appropriate disclosure having regard to the basis upon which the claim was brought. Mr Mehrzad contended that the case has '*morphed from the thirteen pleaded matters in the Amended Particulars of Claim to a whole swath of other matters including specific phone conversations, meetings and contracts other than with Colas and Carillion none of which had been pleaded*'. If there was any issue in respect of disclosure, the relevant application for specific disclosure should have been made in advance of trial.

**Mr Ashton**

378. I deliberately consider his evidence at the end of my review of the other evidence. I do find it necessary to exercise caution when considering the evidence given by Mr Ashton. He denied that he had orchestrated events. It is submitted that he would not benefit from any conspiracy. My attention is drawn to the fact that there is no evidence that the First Defendant was to move to Xrail. It is possible that that was to be a future move but there is no evidence to support such an interpretation. I do find

that he experienced difficulty in his relationship with Mr Shipley and Mr Paul Goodchild. It was important that he should have an open relationship and share information with them. He failed in his duty to share essential information. In the end, I find the evidence of Mr Ashton to be consistent with the evidence given by the other defendants. I have considered the pleaded acts relied upon in the context of the evidence heard at trial and find that the claim is not made out. I find that the First Defendant was trying to find opportunities for the Claimants through Xrail and so provided information.

### **Actual loss**

379. For completeness, I consider the question of whether the First Claimant suffered any actual loss as a result of the alleged actions. The main submission on this aspect of the case was made by Mr Mehrzad. It is submitted that there is no evidence of actual loss which is necessary to make out a claim in tort. I accept that there must be evidence of actual loss albeit that I am not concerned with its quantification.
380. I consider the issue on the basis of the evidence given by Mr Shipley. I agree with defence counsel that much criticism can be made of the schedule which was produced when he was recalled. I therefore do not attach weight to that schedule. In my judgment, on the basis of the evidence given by Mr Shipley, there is evidence of actual loss in respect of the Colas Rail work. The First Claimant was undertaking work for Colas Rail Ltd. They were only prevented from carrying out the work by the loss of their operatives. If there had been a conspiracy as alleged then the direct cause of their loss would have been the actions of the Defendants. I am not satisfied to the required standard that there was any actual loss in respect of Carillion. That work had become less and less and the company did not find a place in the ongoing work forecast.
381. Accordingly, and despite the clear and succinct argument advanced by Mr Mehrzad I find that there is actual loss.

### **Conclusion**

382. I have not been able to set out every point explored in the evidence and raised in submissions but have considered all essential matters. In particular, I have kept in mind the comments made by Mr Quinn in the Closing Chronology. I have considered the pleaded acts in the context of the totality of the evidence. I have kept in mind the need to consider all matters. In this case it is important to underline the necessity of deciding the case upon the evidence and proper inferences that can be drawn from that evidence.
383. I find that there was not a conspiracy as alleged by the Claimants. I find that the Defendants were not engaged in dishonest acts which would in reality have involved others. The facts do not fit the theory. I find that there was no intention to cause damage to the Claimants.
384. The claims for Breach of Confidence and Breach of Contract and Duty are not made out.

385. The claim is generally not made out and the Claimants are not entitled to the remedies and relief claimed. The claims are dismissed.
386. There must be Judgment on the claims for the Defendants with costs.
387. At this stage I make no order on the Counterclaim. Mr Ashton failed to keep Mr Shipley and Mr Goodchild informed of essential matters concerning the company. He created an email which gave a false impression and which did not accord with what had taken place.

### **Directions**

388. Any application in respect of costs to be served by 4pm 19 February 2018. Any response to be served by 4pm 26 February 2018. Any hearing to be listed after 5 March 2018.
389. Any Defendant who wishes to make a Claim for loss arising from the Order of 27 July 2017 must by 4pm 1 March 2018 serve a Statement of Loss and any supporting evidence and seek further directions.
390. In the light of my findings, if the Counterclaim is pursued, I require further submissions from the relevant parties to be served by 4pm 26 February 2018.
391. Any application for permission to Appeal shall be made in writing by 4pm 19 February 2018. Any response by 4pm 26 February 2018. The application will be determined on 5 March 2018 on the papers unless there is a request for a hearing.
392. The time is extended for the submission of any renewed application for leave to appeal to the Court of Appeal until 21 days after the determination of any initial application.