EMPLOYMENT TRIBUNALS

Claimant: Mrs M Ateh

Respondent: Globalgrange Ltd

Heard at: London Central

On: 18, 19, 20 & 21 March 2019
22 March (in chambers)

Before: Employment Judge H Grewal
Mrs H Craik and Ms L Simms

Representation

Claimant: Ms S Chan, Counsel

Respondent: Mr A McPhail, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The complaints of having been subjected to detriments for having made protected disclosures are not well-founded;

2 The complaint of unfair dismissal under section 103A of the Employments Rights Act 1996 is not well-founded;

3 The complaint of unfair dismissal under section 98 of the Employment Rights Act 1996 is well-founded and the Respondent is to pay the Claimant compensation in the sum of £2,611.28 (basic award of £489 and compensatory award of £2,122.28).

REASONS

1 In a claim form presented on 15 January 2018 the Claimant complained of unfair dismissal. At a preliminary hearing on 23 April 2018 she was given leave to amend her claim to include complaints of having been subjected to detriments and dismissed for having made protected disclosures.

The Issues

2 The issues that we had to determine were as follows.

Protected disclosure detriments

2.1 Whether on 16 May 2017 the Claimant gave Tony Matharu a written statement setting out what had happened on 15 May 2017;

2.2 It was not in dispute that on 21 June 2017 the Claimant made a witness statement to the police about the events of 15 May 2017;

2.3 Whether the above disclosures, if made, amounted to a "qualifying disclosure" within the meaning of section 43B(1)(a) of ERA 1996;

2.4 If they did, whether the former was a protected disclosure under section 43C of ERA 1996 and the latter a protected disclosure under either section 43G or 43H of ERA 1996.

2.5 Whether the Claimant was subjected to the following detriments:

(a) The Respondent commenced a redundancy process in respect of her role;

(b) The Respondent failed to conduct a fair redundancy process;

(c) The Respondent failed to properly consider alternative roles and to provide the Claimant with information about them;

(d) The Respondent appointed Mr Das to hear the appeal;

(e) The Respondent refused to appoint an independent consultant to hear the appeal;

(f) The Respondent conducted a sham and/or unfair appeal process.

2.6 If the Claimant was subjected to any of the detriments, whether she was subjected to them because she had made protected disclosures.

Unfair Dismissal

2.7 If the Claimant made any protected disclosures, whether that was the sole or principal reason for her dismissal;

2.8 If it was not, what was the reason for the dismissal. The Respondent contended that it was redundancy;

2.9 If it was redundancy, whether the dismissal was fair.

The Law

3 Section 43B(1) of the Employment Rights Act 1996 provides,

> "*… a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show on or more of the following –*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed."*

4 A qualifying disclosure is a "protected disclosure" if it is made to the employer (section 43C of ERA 1996) or if it is made to a third party in accordance with section 43G or 43H of ERA 1996.

5 Section 47B(1) of ERA 1996 provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

6 Section 103A of ERA 1996 provides that an employee shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason,) for the dismissal is that the employee made a protected disclosure.

7 In a claim for unfair dismissal the onus is on the employer to show the principal reason for the dismissal and that it is a potentially fair reason. The fact that an employee is redundant is a potentially fair reason (section 98(1) and (2) of ERA 1996).

8 Section 139(1)(b) of ERA 1996 provides that an employee wo is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

> "*the fact that the requirements of that business –*
>
> *(i) for employees to carry out work of a particular kind, or*
> *(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the business*,
>
> *have ceased or diminished or are expected to cease or diminish."*

9 Section 98(4) of ERA 1996 provides that whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall e determined in accordance with equity and the substantial merits of the case.

10 In a case of redundancy, the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation (per Lord Bridge in **Polkey v A E Dayton Services Ltd [1987] IRLR 503**).

The Evidence

11 The Claimant, Helen Smith (former PA to Tony Matharu) and Taariq Ahmed (former employee of Global Hospitality Services Ltd) gave evidence in support of the Claimant. The following witnesses gave evidence on behalf of the Respondent – Rajeshpal Matharu (Director), Mira Gohill (Head of HR), Bhakta Das (General Manager, Grange Tower Bridge Hotel) and Nisa Taheri (Sales Manager, Grange St Paul's Hotel and Sales Manager for the Grange Health Spas). We also had before us an agreed bundle of documents. Having considered all the oral and documentary evidence the Tribunal made the following findings of fact.

Findings of Fact

12 The Respondent is a hotel operating company which at the material time owned and operated about sixteen hotels in Central London and one in Bracknell under the trading name Grange Hotels. The Respondent is owned and controlled by three brothers - Harpal Matharu ("Harp"), Rajeshpal Matharu ("Raj") and Tejinderpal Matharu ("Tony"). They are all Directors of the company. Tony Matharu was the Managing Director and was responsible for sales and marketing and HR. Raj Matharu was responsible for financing and acquiring and developing new hotel sites. Harp Matharu's area of responsibility was managing the day to day financial affairs of the Group dealing with suppliers, procurement, etc. The Respondent had approximately 1500 employees.

13 The Respondent's four main hotels in Central London (The Grange Holborn, The Grange St Paul's, The Grange Tower Bridge and The Grange City) had health clubs and spas. The spas were called Ajala Spas. Since about 2010 Nisa Taheri was the Group Sales Manager for the health clubs. She was also the Sales Manager for the Grange St Paul's Hotel. She was based at the St Paul's hotel. St Paul's health club was the first one and the busiest.

14 On 2 October 2013 the Claimant commenced employment with the Respondent as Group Spa Manager. She was appointed by Tony Matharu and reported to him. Although her contract provided that her normal place of work would be one of the hotels operated by the company, she was based at one of the Respondent's Head Offices at 15 Monck St in Victoria. Her salary was £23,000 pa. There has never been any job description for that role.

15 Tony Matharu and the sales and marketing staff were based at the office in Monck Street, as were the employees of Global Hospitality Services Ltd ("GHS"). GHS was set up by the three Matharu brothers and it was known that they owned and ran the company although none of them was a shareholder, director or employee of GHS. Harp Matharu controlled the finances of GHS and Tony Matharu effectively ran it. GHS went into administration in late 2017 and subsequently into liquidation. Harp and Raj Matharu were based at the Respondent's other Head Office at Rochester Row.

16 In October 2015 Tony Matharu appointed the Claimant to the post of VP Wellbeing Resources on behalf of Global Hospitality Services Ltd. This role entailed the Claimant leading in product development from concept through to development and then looking to promote and sell their brand to other hotels. From about 2016 the major part of the Claimant's time was devoted to this role. The Claimant was not given a separate contract with GHS for this aspect of her work or paid by GHS for it.

17 From about early or middle 2016 the three Matharu brothers have been involved in a bitter and acrimonious business dispute, with Harp and Raj Matharu in one camp and Tony Matharu in the other. In March 2016 Raj Matharu sent all General Managers and HR staff a memo in which he said certain important decisions, including investigations into matters that could lead to disciplinary action, had to be approved at least by two directors. Its purpose was to prevent Tony Matharu from taking those decisions on his own. Sometime later that year the Board removed responsibility for HR from Tony Matahru and gave it to Harp Matharu. In November 2016 the three brothers entered into an agreement as a result of which Tony Matharu's role was limited to certain specific sales and marketing functions. His interaction with staff was also curtailed.

18 The staff were aware of the dispute but unfortunately none of the Directors sent out any clear communications to the staff explaining any changes in reporting lines and management of different functions.

19 By the beginning of 2017 the Claimant's salary had increased to £33,000 pa. In each of the four hotels which had spas, there was a Health Club and Spa Manager who managed both the health club and the spa. They were based at the hotels. These managers reported to the General Manager of the hotel.

20 In summer 2016 the Claimant had a meeting with the Health Club and Spa Managers. One of the matters discussed was new uniforms for the beauty therapists. It was agreed was that the Claimant would visit all the health club in the next couple of weeks for a uniforms trial. The matter was not progressed and in February 2017 Karolina Sumeradzka, the manager of St Paul's Health Club and Spa, raised the matter with Nisa Taheri. Ms Taheri raised the matter with Raj Matharu who asked her to sort it out. She ordered new uniforms for the staff.

21 On 12 January 2017 Ms Taheri passed on to the Health Club and Spa managers Harp Matharu's instructions about the persons in the head office in Rochester Row to whom they should send financial information and orders for equipment.

22 On 20 Feb 2017 Mira Gohil was appointed Head of HR. She reported to Harp Matharu. The staff were not informed of her appointment.

23 Around the beginning of May 2017 Harp and Raj Matharu decided that the business no longer required certain creative Marketing roles on a full-time basis and that any future work of that kind would be dealt with externally on an "as and when needed basis." On 3 May Mira Gohill wrote to four employees in the Marketing department informing them that the directors had decided that there was no ongoing requirement for their roles and they were, therefore, at risk of redundancy. She informed them that at first glance there was no suitable alternative employment within the Respondent if they were made redundant. She invited them to attend individual

consultation meetings with her on 5 May. When the employees complained of not being given enough notice, the meeting was moved to 8 May.

24 At about the same time Raj Matharu had conversations with Karolina Sumeradzka, the health club and spa manager at St Paul's, and three of the General Managers about the Claimant's involvement in the management of the spas. His impression from the conversations was that she played a limited role in managing the spas. On 11 May he called the Claimant and asked her to send him and Harp Matharu a list of her responsibilities and duties. The Claimant sent them both an email on the same day. In the email she said that in the previous year she had been project managing the products and amenities of Ajala spas through GHS. As part of that she had looked at "*formulations, branding, product designs, costings and outsourcing packaging*" and at hotels across UK and Europe to which they could promote Ajala spas' amenities and products. She attached to that email a document headed "Mission, Vision, Objective and Goals Statement." She did not set out in that document her responsibilities and duties as a Group Spa Manager.

25 On 15 May Harp Matharu attended the office in Monck Street with a large man wearing a tracksuit (it was subsequently said that he was a security officer) and Mira Gohill. There were a number of employees of GHS and the Respondent, including the Claimant, working in the open plan office on the ground floor. In the presence of all the employees Harp Matharu told a particular employee that he was being suspended and asked him to hand over his laptop. The employee said that it was his personal laptop and he refused to hand it over. Mr Matharu then told man in the tracksuit to get the laptop from the employee and the man put his arms round the employee and tried to get the laptop from him. There was a physical struggle as the employee tried to hold on to his laptop. After a couple of minutes another employee intervened told them that what they were doing was not right. The suspended employee was then allowed to leave the office with his laptop. It was a wholly unacceptable way to carry out a suspension. The fact that Ms Gohill did not advise against that course being adopted or do anything to stop what was happening is a clear indication that she was a powerless individual within the Respondent. She had no authority to give Mr Matharu HR advice but followed his instructions and his lead.

26 The employees who had witnessed the incident were upset and distressed. Helen Smith, who had been Tony Matharu's PA for 22 years, told them that if anyone wanted to write down what had happened in a statement for Tony Matharu she would put it on his desk. A short while later Archana Pillai from HR told them that she had received a call from Harp Matharu who had said that if anyone gave statements to Helen Smith they would be disciplined. The same day Ms Gohill sent Helen Smith an email. She said that Ms Smith had no HR role and that she should refrain from obtaining statements from the employees. She invited Ms Smith to a meeting to explain her conduct that day and the previous Friday.

27 The Claimant's evidence was that she wrote a statement on 15 October and that she gave it to Tony Matharu the following day. We did not find that evidence to be credible. There was no reference to her having made such a statement or to it being the reason for her redundancy in any of numerous letters that she sent to the Respondent in connection with her redundancy or in the statement that she made to the police. She suggested possible reasons why she was being made redundant but making a statement to Tony Matharu was not one of them. If she had made that statement and believed it was the reason for her redundancy, she would have said

so. At the appeal hearing in 16 October 2017 she mentioned for the first time that she was being made redundant because she had reported the assault to Tony Matharu. The first time that she said that she had given a written statement to Tony Matharu on 16 May 2017 was in the claim form in January 2018.

28 Around 22 May Raj Matharu spoke to Mira Gohill about the Claimant's role. Having looked at the information that the Claimant had provided on 11 May his view was that she was predominantly doing GHS work and that she was not fulfilling any duties as a Group Spa Manager although she was being paid by the Respondent for that role. As the spas appeared to be functioning without any significant input from her, he took the view that there was no longer a need for that role. He, therefore, instructed Ms Gohill to start the redundancy process with a view to terminating the Claimant's employment. He sent her a copy of the Claimant's email of 11 May. It is very likely that that he discussed the matter with Harp Matharu and that he agreed with his decision.

29 The employment of the four employees in the Marketing department who had received redundancy letters was terminated towards the end of May. Some of them were dismissed, others resigned.

30 On 5 June 2017 Ms Gohill invited the Claimant to a first consultation meeting on 12 June in relation to her potential redundancy. She said that as each spa in the hotels had its own spa manager who dealt with all aspects of that spa, they had taken the view that there was no longer the need for a Group Spa Manager. Initial official inquiries suggested that the Claimant had been more involved project managing the development of products and amenities. The Claimant was advised of her right to be accompanied.

31 On 12 June, in advance of the meeting, the Claimant sent Ms Gohill a letter in which she set out her response and initial views. She set out the duties that she had carried out after her appointment in 2013 and said that under her leadership the annual sales of the spas had increased by 25 % between 2013 and 2016. She said that in October 2015 Tony Matharu had further appointed her to the post of VP Wellbeing Resources on behalf of GHS. This was in addition to her Group Spa Manager role. She then set out the typical duties that she carried out in the two roles. She then referred to the recent upheaval at Grange Hotel as a result of the dispute between the shareholders. She had noticed multiple staff departures and redundancies of staff who had been reporting to Tony Matharu. She said that her role had been undermined and gave Nisa Taheri ordering the staff uniforms as an example of that. She said that the upheaval had reached a particularly disturbing point for her when she witnessed the shocking and forceful removal of Varun Kapoor (the employee who was suspended on 15 May). She said,

> "*I therefore feel that my proposed redundancy is a direct result of recent upheaval at the Grange Hotels."*

She said that Tony Matharu had not given her any instruction in the past three months in respect of her duties. She claimed that the conduct of the Respondent towards her could be unfair dismissal "*as a whistle blower who witnessed the above described incident on 15th of May 2017."* She then asked a number of questions and said that she wanted a written response to them.

32 The meeting on 12 June was brief because the Claimant wanted a written response to the questions in her letter. Ms Gohill took with her to that meeting a copy of the staff vacancy list as of that date. There was, however, no discussion of alternative roles at that meeting because Ms Gohill felt that it was premature at that stage. She did not give the Claimant a copy of the list. There was not on that list any vacancy for a similar role to the Claimant's role or at a similar level of salary. There were vacancies for Conference and Events Executives and Receptionists. Those were roles that paid less than the Claimant's role.

33 Prior to responding to the Claimant's questions Ms Gohill decided to speak to some of the Health Club and Spa managers to get an understanding of what the Claimant did in her role. She spoke to Karolina Sumeradzka who later confirmed in writing what she said to Ms Gohill verbally. She said that in the previous six months the Claimant had visited the spa at St Paul's on three occasions. Staff had not been provided training in the past two years. There had been problems with the products orders for the spas. The Claimant had not dealt with simple issues, like new uniforms for the staff. The Claimant provided very little support when there were problems, such as when an employee was dismissed because of performance and conduct issues. The Health Club and Spa manager at Grange Holborn also said that that she had no contact with or support from the Claimant. Ms Gohill was unable to speak to the Health Club and Spa Manager at Grange City, so she spoke to the General Manager of the hotel, Shameel Anis. He said that the Health Club at the City hotel was managed on a day to day basis by the team in-house with minimal support or intervention from the Claimant. When the Health Club and Spa manager had any problems, she found it easier to approach the duty managers who were able to find solutions quickly. His understanding was that the Claimant assisted with the training of therapists as and when required.

34 On 21 June 2017 the Claimant gave a witness statement to the police about an assault on her colleague Mr Kapoor at the Respondent's office on 15 May 2017. In that statement the Claimant gave a detailed account of the events of that day, including what Helen Smith and Archana Pillai had said. She did not say anything about her having made a statement and having given it to Tony Matharu.

35 On 6 July Ms Gohill responded to the Claimant's letter of 12 June 2017. She explained why the Claimant's role had been identified as being potentially redundant. She said that each of the spas had its own manger and the operational aspects of each spa were dealt by its manager and there was no need for onging overall supervision at a senior managerial level. She had spoken with the spa managers and they had confirmed that the Claimant played no part in the running of the spas. The perception was that she dealt with Ajala Spa products and some training. She said that the Claimant's role was unique and, therefore, no-one else had been pooled with her for selection for redundancy. She invited the Claimant to another consultation meeting on 12 July 2017.

36 On 10 July the Claimant wrote a long letter to Ms Gohill and asked for the meeting on 12 July to be postponed because Ms Gohill had provided unsatisfactory answers to her questions and she needed an agenda and two to three weeks to prepare for the consultation meeting. She suggested that the Group Sales Manager should be put in the selection pool with her because it appeared to her that the Respondent was trying to merge the two roles. She asked for an independent person to oversee

the redundancy process because she believed that Ms Gohill was not impartial but was under instructions to make her redundant regardless of the facts. She said,

> "*It is clear that I only received a potential redundancy notice following that incident on the 15th of May 2017 because I am a potential whistle blower who may provide a witness account despite the instruction not to do so from Mr Harp Matharu, transmitted by Mrs Archana Pillai, under threat of disciplinary action."*

Conspicuously absent from that is any reference to her having given a statement to Tony Matharu and to that being the reason for her being made redundant.

37 On 11 July Ms Golhill agreed to postpone the meeting. On 2 August Ms Gohill invited the Claimant to a consultation meeting on 4 August. She advised her that she could be accompanied by a work colleague or a trade union representative. Ms Gohill also dealt with some of the points made in the Claimant's previous letter. She repeated that the Claimant's position was unique and that there was, therefore, no selection pool in relation to her potential redundancy. She said that she did not believe that it was necessary or appropriate to appoint anyone else to conduct the redundancy process and said that there were no whistle blowing issues.

38 On 3 August the Claimant responded and said again that she needed an agenda and two-to three weeks to prepare for the hearing. She said that Ms Gohill had "*caused, encouraged aided and abetted a criminal assault"* that she and others had witnessed and that those who had witnessed it were now "*being bullied such as in the flawed and unfair process"* which she described as 'potential redundancy'. She also said that she needed more time in order to find someone to accompany her.

39 On 3 August the meeting was adjourned to 9 August to give the Claimant sufficient time to find a work colleague to accompany her. Ms Gohill said that she did not think an agenda was needed. She said,

> "*The very short point here is that you are employed as a Group Spa Manager and each spa has its own Manager who is responsible for the day to day matters in relation to their own spa. Whether you accept this or not, your day to day involvement in the spas has substantially reduced in circumstances where there is a potential redundancy situation.*
>
> *I have also tried to explain to you that this is not about your performance. This is about whether or not the company still needs a Group Spa Manager."*

She also said that before any final decision was made she would consider whether there were any suitable alternative vacancies. However, the Claimant had a unique skillset and she did not believe that there were any suitable alternative vacancies for her within the company.

40 The Claimant attended the meeting on 9 August accompanied by Helen Smith. Ms Gohill told the Claimant that Ms Smith could not accompany her because the Respondent was investigating her. She adjourned the meeting for the Claimant to find someone else. The Claimant said that she was taking two weeks' annual leave starting the following day. At 2.25 that afternoon Ms Gohill sent the Claimant an email and asked her to attend the meeting at 4pm. that day. She said that Ms Smith could

accompany her if she did not interfere as she had done that morning. Ms Smith had not interfered in any way that morning. The Claimant objected to having to attend the meeting at such short notice. Ms Gohill the adjourned the meeting to 4 September 2017 and said that, having reconsidered the matter, it would be acceptable for Ms Smith to accompany her.

41 The meeting took place on 4 September. The Claimant was accompanied by Sartaj Deegan. He was advised that he was there to take notes and was not to interfere in the meeting. The Claimant said that her role was very similar to that of Nisa Taheri and asked again why she was not being considered for redundancy alongside her. Ms Gohill responded that the role might be similar but the Respondent was looking at whether the Group Spa manager role was required. The Claimant said that staff working for Tony Matharu were being targeted and that the Respondent was getting rid of her because she was a whistle blower because of what she had seen – a thug assaulting someone in the office. The Claimant said that she performed really well in her role and had performed better than Ms Taheri who was being retained. The Claimant said that she very good at sales and asked Ms Gohill whether she had looked into alternative position for her. Ms Gohill's response was to ask her whether she had anything to add. There was no discussion of what roles were available and whether the Claimant was interested in any of those roles.

42 On 13 September Ms Gohill wrote to the Claimant to inform her that she was being dismissed because of redundancy as of that date. The Claimant was paid in lieu of notice and statutory redundancy. Ms Gohill said that having consulted with her she had taken the view that as each spa had a spa manager who was responsible for all aspects of the management of the spa the role of Group Spa manager was no longer required. The issue was not whether the Claimant had the skills and qualifications to do the role or whether she had performed well in it; the issue was whether the role was needed. She said that role of Group Sales Manager was different from the Claimant's role. The Claimant's role was a unique one and hence no one else had been in the selection pool for redundancy, She said that she had looked at the possibility of alternative employment and did not consider that there was at that time anything suitable for her. The Claimant was advised of her right of appeal.

43 The Claimant appealed on 18 September. In her appeal she repeated many of the points that she had made previously about the redundancy not being genuine and her having been targeted because she had worked under Tony Matharu and had witnessed the assault on 15 May. She also complained that Ms Gohill had never consulted her about alternative employment.

44 Bhakta Das, the General Manager of Grange Tower Bridge Hotel was asked to deal with the Claimant's appeal. Mr Das met with the Claimant on 16 October 2017. The meeting was relatively brief. The Claimant repeated points that she had made before. In the course of that hearing the Claimant said,

> "*…they've decided to make redundant for the fact that I have witnessed an assault which I reported it to the police, the fact that I reported it to Mr Tony Matharu because I was instructed because he ahs always been my direct line manager when I was employed within the company."*

45 Following the meeting with the Claimant Mr Das conducted interviews with Nisa Taheri and the four Health Club and Spa managers. The Health Club managers all said that the they did not see the Claimant very often, if there were any issues they were resolved internally, if they were short of therapists they approached the other hotels, if they had a problem they went to the general manager of the hotel or sometime Ms Taheri, the Claimant did not deal with recruitment or training of staff, the Claimant focused on a product called Claudalie which had to be ordered through her.

46 On 10 November 17 Mr Das sent the Claimant the outcome of her appeal. He said that he had investigated the matter further by interviewing the four Health Club and Spa managers. He summarised briefly what each one had said and said that it seemed clear to him that the Claimant did not have substantial day to day involvement with the individual Health Club and Spa managers and did not involve much management of them or the spas. In those circumstances, Ms Gohill had been entitled to conclude that there was no longer a need for a Group Spa Manager. There had been a genuine redundancy. That was confirmed to him by the fact that the Claimant had not been replaced. The Claimant's appeal was not upheld. **195**

47 The Claimant started looking for new roles in June 2017 when she was told that her post was at risk of redundancy. She focused on searching and applying for jobs that were similar standing and level of pay as her role with the Respondent. She applied for a few roles that paid significantly more. At that stage she was being paid £33,000 per annum by the Respondent. She made no applications between 17 October 2017 and 23 January 2018 and about eight applications between that date and the end of June 2018. On 9 October 2018 she started in a role that paid £32,000 per annum with a bonus potential of £5,000. In the intervening year she did temporary work for three days in October 2017, a day in September 2018 and a day in October 2018. She was dismissed from the new role on 8 March 2019.

Conclusions

Protected Disclosures

48 We have found that the Claimant did not give a written statement to Tony Matharu on 16 May about the incident on 15 May.

49 We concluded that her witness statement to the police on 21 June 2017 was a qualifying disclosure. She disclosed information which she reasonably believed was in the public interest and tended to show that a criminal offence had been committed. We also concluded that it was protected under sections 43G and 43H. She reasonably believed that the allegations in it were true and she did not make the disclosure for the purposes of personal gain. In light of the instruction that had been given by Harp Matharu, via Archana Pillai, she reasonably believed that she would be subjected to a detriment if she made the disclosure to the Respondent and that any statement made would concealed or destroyed. In all the circumstances, it was reasonable for her to make the disclosure to the police.

Detriments on the grounds of having made protected disclosures

50 The redundancy process was commenced before the Claimant made the witness statement to the police. Therefore, the witness statement to the police could not be

the reason for the start of the redundancy process. There was no evidence before us that prior to the Claimant's dismissal anyone at the Respondent was aware that she had given a witness statement to the police. The Claimant herself never told the Respondent that until the appeal hearing in October 2017. We looked at the issue of whether the Claimant was subjected to the alleged detriments in the context of considering the fairness of the dismissal. However, we concluded that even if the Claimant was subjected to any of those detriments, it could not have been because of the witness statement to the police because there was no evidence that the Respondent was aware of it.

Unfair Dismissal

51 We considered first what the reason for the dismissal was. We found that the reason for the dismissal was that the business no longer required the Group Spa Manager role. Having made inquiries of the Claimant, the health club and spa manager at the hotel in St Paul's and the general managers at three of the four hotels that had spas, Raj Matharu concluded that the Claimant had for over a year not been managing the spas because she had been devoting her time to the new role to which she had been appointed in October 2015, and that the spas had continued to function without any significant input from her. Her role was redundant. There was evidence to support that conclusion.

52 That decision was made by Raj Matharu in May 2017 and it was the reason for the ultimate dismissal on 13 September 2017. That decision was made before the protected disclosure and could not, therefore, have been caused by it. Nor did we accept that that was not the real reason for the dismissal and the real reason was that she had witnessed the assault on 15 May or that she had reported to Tony Matharu. Raj Matharu had started making inquiries about the Claimant's role before the incident on 15 May 2017.

53 The decision to delete the role was made by Raj Matharu, possibly in consultation with Harp Matharu. Ms Gohill was instructed to go through the necessary process. We do not accept that Ms Gohill had the autonomy or authority to make the ultimate decision. All the evidence before us indicated that the ultimate decision would be made by Harp and Raj Matharu. Whoever made the ultimate decision, the reality was that once the decision to delete the role had been made it was very unlikely, subject to the Claimant accepting some alternative role, that dismissal could be avoided. Contrary to what the Claimant said in the consultation process, her role was not being merged with the Sales Manager's role. It was being deleted because by effectively not carrying out the role for about a year she had shown that it was not necessary. The only way in which the consultation process could have avoided dismissal was if the Claimant had accepted an alternative role.

54 Ms Gohill did not at any stage in the consultation process tell the Claimant what alternative roles were available and discuss them with her. She took a list of vacancies with her on 12 June but did not share or discuss that with the Claimant. When the Claimant specifically asked her on 4 September whether she had looked into any alternative position for her, she did not respond. We do not accept that she looked at alternative vacancies before she sent the Claimant the dismissal letter on 13 September. She did not produce any list of vacancies that she looked at that time. The Claimant raised the mater in her appeal. It was not addressed by Mr Das. Ms Gohill said in evidence that the Respondent advertises vacancies on its website.

There was no evidence that she directed the Claimant to that and even if she, the Claimant would have had to compete with external applicants for those roles. The onus is on the employer to look at what alternative roles are available and to discuss them with the employee to see if the employee can be offered any of those roles in order to avoid redundancy. That did not happen in this case event though the claimant raised it at the last consultation meeting and in her appeal. That makes the dismissal unfair.

55 We did not find that there was any other unfairness in the redundancy process or the appeal. We accept that no one within the Respondent had the authority or the confidence to go against a decision made by Harp or Raj Matharu. That having been said there appeared to be no argument for saying that the Claimant's role was not redundant and there was no basis on which anyone else could have come to a different decision. We did not accept that the redundancy process was a sham.

Remedy

56 Section 122(4)(b) ERA 1996 provides that the amount of the basic award shall be reduced by the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy. The Claimant had been employed for three complete years (2 October 2013 to 13 September 2017) and would have been entitled to a basic award of £1,467. She was paid £978 as statutory redundancy pay. The Tribunal, therefore, makes a basic award in the sum of £489.

57 Section 123 ERA 1996 provides,

> "*(1) Subject to the provisions of this section … the amount of compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the los sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.*
> *…*
>
> *(4) In determining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland."*

58 The loss that is attributable to the employer is what the Claimant would have earned with the Respondent if it had not acted unfairly and had offered her alternative roles that paid less than her role. There was no evidence before us of the roles that were available in September 2017. We assumed that they would have been similar to what was available in June 2017. The evidence before us was that the Respondent paid £20,000 gross per annum for the Conference and Events Executive role in July 2017. We had no evidence of the salary for the receptionist or therapist roles. The mitigation evidence produced by the Claimant showed that the pay for such roles was £22,000 per annum. Doing the best that we could on the evidence before us, we concluded that the Respondent would have been able to offer the Claimant an alternative role that paid £22,000 per annum gross. That would have equated to £1,520 net per month.

59 We then considered whether the Claimant had taken reasonable steps to mitigate her loss. We accepted that it was reasonable for the Claimant initially to have sought work that paid her the same as she had been paid with the Respondent. However, bearing in mind that she had commenced employment with the Respondent at a salary of £23,000 and had received substantial increases in a very short period, it would have been reasonable for the Claimant after a few months to lower her expectations and to realise that perhaps she did not have the skills or experience to command a higher salary. The fact that she was dismissed from the role to which she appointed in October 2018 for not performing up to the standard required is perhaps another indication of that. We concluded that the Claimant had not acted reasonably by continuing to pursue higher paid roles for longer than six months. Had she acted reasonably, she could have found a role that paid about £22,000 six months after her employment terminated. We also concluded that the Claimant's obtaining of a permanent role in October 2018 broke the chain of causation, and any loss flowing from the dismissal from that role cannot be attributable to the Respondent.

57 We concluded that the Claimant was entitled to be awarded compensation of £1,520 a month for six months. That comes to a total of £9,120. The Claimant was paid two weeks' pay in lieu of notice. We were not told how much she was paid but on the basis of her monthly net salary, that would have been £980.91. If that is deducted from £9,120, one is left with the sum of £8,139.10. We added to that £350 for loss of statutory rights. That comes to £8,489.10.

58 We finally considered what the likelihood was, in the absence of any unfairness, that the Claimant's employment would have been terminated in any event. In other words, what were the chances that the Claimant's employment would have terminated even if she had been offered alternative roles that paid about £22,000. The Respondent's case was that it would have made no difference because the Claimant would never have accepted such a role. In determining that issue we took into account that after her dismissal the Claimant looked for a year for roles that paid £33,000 a year or more and that she was very disenchanted with the Respondent once it had started the redundancy process. On the other hand, the Claimant asked about alternative roles during the consultation and in her appeal. She said in evidence that she would have considered a lower paying role had she been offered it. When the Claimant had commenced employment with the Respondent she had been paid £23,000. We concluded that there was a chance that the Claimant would have accepted such a role as a stop gap measure while she looked for a new role that paid more. We put that chance at no higher than 25%. We, therefore, reduced the Claimant's compensatory award by 75% to £2,122,28.

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Employment Judge Grewal

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Date 10 June 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

11 June 2019

FOR THE TRIBUNAL OFFICE