



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Charlene Evans

**Respondent:** Lumina Investments Limited

**Heard at:** Cardiff by CVP                      **On:** 7<sup>th</sup> January 2021

**Before:** Employment Judge Duncan

**Representation:**

Claimant: In person

Respondent: Mr Tudgay (Consultant)

**JUDGMENT** having been sent to the parties on 14<sup>th</sup> January 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

1. The claimant, Miss Charlene Evans, started her employment at the respondent's hotel on the 15<sup>th</sup> March 2016. It is agreed that her employment was terminated on the 24<sup>th</sup> January 2020. During the course of her employment she had reached the status of general manager at the hotel. She states that her take-home pay was £1730 per month and by way of information in her ET1 states that she would work on average 50 hours per week.
2. The respondent operates a hotel at which the claimant previously worked. The exact number of hours for which she was contractually entitled to work is disputed. The respondent states the claimant should work 48

hours per week but that she did not, the relevance of this will become clearer during the course of this judgement.

3. On 3<sup>rd</sup> January 2020 the claimant was given a letter by Mr Jaswal to state that the claimant was at risk of redundancy, the contents of that letter can be found at page 44 of the bundle. It states that, as a result of the proposed changes to the structure of the business, the respondent was considering whether they had a need to reduce employees in certain roles. The letter goes on to state that it is proposed that the role of general manager will cease to exist. The letter states that, at the time, it was only a proposal and no final decision had been made. It states that the respondent will continue to try and identify ways in which redundancy can be avoided.
4. Following the meeting, the claimant collected a number of items from the premises, she handed over the keys, and was generally concerned as to the viability of her employment. Within the bundle can be found the confirmation of dismissal dated 5<sup>th</sup> January 2020 which states that following the recent consultation process the decision was made to terminate employment. The respondent asserts in the letter that the claimant is entitled to 3 weeks' notice pay, less deductions by virtue of unpaid items and debts due to the respondent. The letter states that there was no outstanding holiday pay.
5. Following the decision, the claimant outlines her request to appeal the decision, however, in the respondent's response they reaffirm their position by way of letter, dated 29<sup>th</sup> January 2020. The letter breaks down the reason for the deduction from the claimant's pay, namely, for an outstanding booking balance, table wine, canapés, decoration extras, and five nights at the hotel relating to a wedding on 30<sup>th</sup> November 2019.
6. The ET1 was received on 3<sup>rd</sup> February 2020. The Claimant claims as follows:
  - a) Three weeks' pay in lieu of notice in the sum of £1500;
  - b) Unpaid hours in the sum of £213.40;
  - c) Redundancy payment at £1500;
  - d) 17 unpaid holiday days.

She claimed in total for £4330.15

7. She further particularises her claim in her statement in which she seeks compensation for loss of income until she found employment eight months post-dismissal.

8. The respondent's position is contained within the ET3 dated 28<sup>th</sup> February 2020. They state: the notice pay should be reduced to reflect the deductions made as per paragraph 5 above; the claimant failed to work her contracted hours; and, accordingly, no holiday remains payable. They rely on the failure to work contracted hours as the reason for non-payment for the days in January 2020.

## **Issues**

9. The claims came before Employment Judge Jenkins on 12<sup>th</sup> June 2020. The issues were identified and recorded on the order. At the start of the hearing, both parties confirmed that they remained the issues that needed to be determined. They are as follows:

### *Unfair dismissal*

- a. What was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was redundancy.
- b. Was the dismissal fair or unfair in accordance with Section 98(4) ERA? Was the decision to dismiss a sanction within the "band of reasonable responses" for a reasonable employer?

### *Remedy for unfair dismissal*

If the Claimant was unfairly dismissed and the remedy is compensation, if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would have been dismissed had a fair and reasonable procedure been followed?

### *Unpaid annual leave - Working Time Regulations 1998*

When the Claimant's employment came to an end, was she paid all of the compensation to which she was entitled under Regulation 14 of the Working Time Regulations 1998?

### *Unauthorised deductions*

Did the Respondent make unauthorised deductions from the Claimant's wages (Section 13 ERA) by not paying her for her work in January 2020, and, if so, how much was deducted?

*Breach of contract*

It is not in dispute that the Claimant's contractual entitlement was to three weeks' notice. Was she paid an appropriate sum in lieu of that?

**Preliminary Matters**

10. The claim was listed for a two day hearing on 6<sup>th</sup> and 7<sup>th</sup> January 2021. All parties attended remotely. The claimant was unrepresented. The respondent was represented by a consultant of the company, Mr Tudgay.
11. At the start of the hearing, I proceeded to ensure that everyone was working from the same documentation. It was confirmed that both parties had copies of the 219 page bundle plus the additional attachments that the claimant had sent by way of three additional e-mails to the Tribunal.
12. Mr Tudgay had not had sight of the statement of a Miss Samantha Holland, arrangements were made for that document to be sent to him. I explained the process by which the final hearing would proceed and the need for a question-and-answer process to be followed during the course of the evidence. Mr Tudgay stated that he had made a list of questions that he wished to ask to the claimant. The claimant confirmed that she had made a number of notes but had not yet formulated any questions. Given that she was likely to cross-examine first, I proposed an adjournment of 30 minutes so to allow her to formulate some questions and to allow Mr Tudgay the chance to consider the short statement of Miss Holland.
13. By way of preliminary issue, the claimant had engaged in correspondence directed towards the tribunal but have failed to copy the respondent into that particular e-mail. The email made reference to a number of attachments that the claimant felt compelled to send. In that email, she expresses her view that she felt the documents were irrelevant to the issues at hand. She had included them in the correspondence to try and address some of the concerns the respondent had raised in their statements. Those attachments went to the issue of conduct during her employment. It was confirmed that the respondent was seeking to persuade the tribunal that the reason for dismissal was redundancy. The claimant was stating that the reason for dismissal was the uncovering of suspicious activity and the relationship with the brother of Mr Jaswal. Given that no party was seeking to specifically allege conduct as a relevant matter for the court to determine, save for issues relating to the wedding and deductions from wages, it was agreed by all parties that the

documents attached to the email were highly unlikely to assist anyone. It was agreed that if the claimant wished to pursue her application to adduce those documents, it could be considered during the course of hearing. As it transpired, it was not necessary to do so.

14. The above discussion with both parties led to a focusing of minds upon the issues identified by Judge Jenkins in June 2020. Whilst considering the preliminary issues, the claimant made a number of references to whistleblowing as a reason for dismissal. This was despite there being no reference within the claimant's ET1 of a whistleblowing claim and the fact that it was not raised before Judge Jenkins. I asked the claimant to confirm what she meant by whistleblowing. She confirmed that her case was that the reason for dismissal was not redundancy but instead either the difficulties in the relationship with Lee Jaswal or that she had uncovered confidential information relating to other business enterprises of the respondent's directors. I clarified with the claimant that she was perfectly entitled to argue another reason for dismissal that fell outside the potentially fair reasons for dismissal and in turn she confirmed that she was not making a whistleblowing claim but asked the tribunal to confirm that the reason for dismissal was not redundancy. It does not seem to this tribunal that the claimant was at any stage seeking to pursue a properly formulated whistleblowing claim, and instead she has taken a perfectly proper course in arguing the case that she has.
15. At the end of the 30 minute adjournment, the claimant confirmed that she had enough time to prepare the case. It was agreed that we should proceed with the evidence of the respondent. Whilst both parties were not legally represented, it was clear to me that both had a good grasp of the issues and were perfectly capable of presenting their cases in the time afforded to them. Indeed, for the most part, the hearing ran very smoothly with little interruption. There were occasions whereby both parties required some assistance in formulating a precise question that could be fairly answered by the witness. On these occasions the court assisted in ensuring that both parties put their case properly and gave the witness an opportunity to respond to a properly formed question.

## **Law**

16. In respect of the law that I must apply, I can be relatively brief as the law settled.
17. In relation to the unfair dismissal claim, it is for the respondent to prove the reason for dismissal. The leading case in respect of redundancy is that of *Williams v Compare Maxam Ltd* [1982] ICR 156. In general terms, employers acting reasonably will give as much warning as possible of impending redundancies to employees, consult about the decision, the

process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job. Ultimately, if the respondent can demonstrate that the principal reason for dismissal was redundancy, that reason will fall into one of the potentially fair reasons in accordance with section 98 of the Employment Rights Act 1996. I then consider whether the dismissal was fair or unfair, was the decision to dismiss a sanction within the band of reasonable responses for a reasonable employer. If, as the claimant suggests, the reason for dismissal is not redundancy, and was not one of the potentially fair reasons, then it follows the reason the dismissal would be unfair.

18. The law in respect of the remaining issues is somewhat interlinked but straightforward. It is necessary to calculate the claimant's holiday entitlements and thereafter to consider whether there was any accrued leave outstanding on termination. It is agreed that the terms of the claimant's employment contract entitles her to 5.6 weeks paid holiday per year, inclusive of statutory days i.e. bank holiday, at the claimant's normal basic rate of pay. Further, it is a term of the contract that if the claimant is required to work a statutory bank holiday she will receive a holiday day in lieu. The payment due under reg14(2) of the Working Time Regulations shall be such sum as may be provided for the purposes of the aforementioned agreement. I consider that the law is interlinked because the respondent makes a deduction from the claimant's wages and I must consider section 13 of the Employment Rights Act 1996.

## **Evidence**

*Mr Jaswal - Director*

19. Mr Jaswal affirmed and confirmed the truth of his witness statement, dated 30<sup>th</sup> December 2020. He was asked a number of questions in examination in chief by Mr Tudgay. He explained that the claimant should have completed timesheets. He explained that the claimant should sign the timesheets on arrival at the hotel and when finishing the shift. He stated that this formed the basis of how individuals were paid, that this was for both salaried staff and those on an hourly rate. He explained that where there was no countersignature on the timesheets, the claimant had not had her hours authorised. He stated that the claimant was never informed that she could work from home and that it should have been obvious to the claimant, as the general manager, that she should not countersign her own shifts. In respect of the meeting on 3<sup>rd</sup> January 2020, he states that he spent a long time in the office with the claimant. He states that he was discussing a downturn in the business. He was clear that there was not enough revenue coming into the business and discussed with the claimant that he was restructuring and looking at the possibility of making the general manager role redundant. He gave the claimant a letter to read

which can be found in the bundle at page 44. He states he consulted with the claimant in respect of the other job roles and looked at the possibility of part-time or full-time employment but that the roles that would be suited to the claimant were simply not available in the hotel. He states there was nothing that the respondent could offer the claimant.

20. With regards to the wedding on 30<sup>th</sup> November 2019, he states that he became aware at some point after 3<sup>rd</sup> January 2020 that there were irregularities on the booking system and it was only at this time that he started to investigate the matter. He states that all outstanding items were on the booking system. He states that the receipts and outstanding payments did not reconcile. I was referred to a number of emails that question the claimant's truthfulness in respect of the time off work in June 2020 and he questions the way in which claimant had requested the time off. Mr Jaswal stated that the plan was for the claimant to take two days off work but that it took three weeks before she returned to work properly. He states that the claimant demanded full pay and it was not viable given she should have been at the hotel. Mr Jaswal was clear that he only discovered the truth regarding the operation after 3<sup>rd</sup> January 2020, the clear implication being that he effectively invites the court to conclude that it did not play a role in his decision-making with regards to the redundancy. In response to a question from the court, he was unable to be more specific as to when his knowledge of the operation came about, but was clear that it was in the 24 hours after the meeting on 3<sup>rd</sup> January 2020. Mr Jaswal stated that this conduct meant she was a clear candidate for gross misconduct and he invites the court to consider that he approached the issue sensitively in the best interests of the claimant, he says that he had already started the redundancy route, the claimant had requested a reference, and he did not want to tarnish her reputation by bringing out the issues relating to her conduct. Mr Jaswal, when asked about the time in January 2020 that the claimant was not paid states that the hotel was shut from 26<sup>th</sup> December 2019 until late January the following year and that for this reason there would have been no work for the claimant to complete. He was taken to a number of documents within the bundle that show paperwork being sent to the respondent's premises. He asked the tribunal to consider that they showed little more than appropriate correspondence with other companies linked to the respondents by way of subsidiary. Mr Jaswal made a number of allegations that the claimant had doctored timesheets in Excel form and those in handwriting.
21. At the end of Mr Jaswal's evidence in chief, I asked the claimant whether she needed more time to formulate her questions. She stated that a further ten minutes would give her the opportunity to cross-reference her questions to a number of page numbers. I stressed that the Tribunal had heard a considerable amount of evidence in chief and if she needed more

- time, she should ask. We returned and commenced cross-examination at midday and the claimant confirmed that she had been given enough time to prepare her questions.
22. It quickly became apparent that the claimant had made detailed notes of what she wanted to ask the respondent, however, she struggled on occasions to formulate her questions so as to give the respondent's witnesses a proper opportunity to answer. It was therefore appropriate to take breaks throughout the cross-examination to allow her to properly formulate questions and to assist her to breakdown lengthy statements into question form so that Mr Jaswal could fairly answer the case being put to him. This is not meant as a criticism, but only to emphasise that considerable care was taken to ensure that Mr Jaswal was given a proper opportunity to answer the claimant's case.
23. Under cross-examination, Mr Jaswal states that the claimant was never allowed to work from home. This is despite the fact that the claimant had included within the bundle a number of documents and messages where it appears that Mr Jaswal would have known she was working from home. He states that there was no agreement in verbal terms or written terms. He disputes she ever worked from home over the telephone. This evidence is relevant to the outstanding holiday pay. The claimant put to Mr Jaswal two timesheets and suggested the handwritten timesheets, completed on a contemporaneous basis, did not stack up against the respondent's own holiday schedule. When questioned as to the discrepancies, he repeated that there are clearly irregularities in the timesheet, and it is difficult to ascertain whether the claimant worked on any given day or that she had taken holiday. He states he had no recollection of her being at the hotel following the operation in June 2019 and states that this was a considerable time ago. He said that there were periods when staff were trying to contact the claimant but were unable to do so. He repeated his concern that given the claimant was the general manager, she should have been getting her hours countersigned - but she did not.
24. The claimant, rightly, asks the question, if she was missing so many hours, and if she failed to attend work, why not do something about it? He states that he did not pay a great deal of attention to the hours of the salaried staff and that the claimant should have been setting a good example and abided by the processes. He, in my view, failed to properly answer the question. It was suggested by the claimant that the reason he took no action was that the claimant had been attending on the occasions included in the handwritten timesheets. Mr Jaswal rejected that suggestion and continued to reiterate that the claimant had failed to comply with her obligations of countersigning the hours – he demonstrated a reluctance to properly deal with the question posed to him.



25. Mr Jaswal rejected the suggestion that the claimant had sent the timesheets every month. He was critical of the claimant holding a wedding meeting at her home, or the home of her friend - it was, in his view, clear that any meeting should take place in the hotel. He criticised the claimant for having a conflict-of-interests and suggested that she should not have been working on this booking. This is despite it being apparent that the personal relationship between the claimant and her friend seems to have led to income being generated for the hotel.
26. In respect of the table wine at the wedding, Mr Jaswal relied upon a statement of Miss Carol Jones to state that a stocktake had been undertaken following the wedding. Miss Jones was not called to give evidence during the course of the two days and I attach limited weight to her statement. The claimant has not had an opportunity to challenge her evidence, it is a matter for the respondent as to the witnesses that they would seek to call. Despite this, Mr Jaswal continued to rely upon the contents of the statement as conclusive proof to support his position.
27. In relation to the deduction from wages, the claimant questioned why should she be liable for the wine and the unpaid rooms. Mr Jaswal states that she had offered the rooms out and dealt with the whole account, that she should have ensured that the rooms were paid for and that she failed to do so – it is therefore her responsibility. The claimant suggested that various other individuals had involvement on the booking system. Mr Jaswal states that members of staff told him that the claimant asked them not to chase the funds on the accounts. No witnesses attended to give evidence on the point but Mr Jaswal maintains that that is the position. He expressed that that the hotel has no chance of getting the individuals to pay for wine and unpaid rooms after the event and that therefore the claimant should be liable. No evidence was adduced to demonstrate that the third parties had been chased for payment. The claimant asked Mr Jaswal about the other individuals that amended the bookings, seeking to make the point that it was not just her that dealt with the account. Mr Jaswal rejected this stating that the claimant took the booking of the rooms and so responsibility rests with her. He suggested that the reason why staff members have not attended to give evidence was that the local area was a close-knit community and he did not want to put staff members through the process of giving evidence.
28. With regard to the redundancy situation, the claimant asked Mr Jaswal to consider a number of documents contained in the bundle relating to third party companies. The claimant suggested that the real reason she had been dismissed was that she was aware of potentially illegal activity through these other companies, or perhaps relating to the license of the hotel. In response to this, Mr Jaswal stated that the other companies were

simply part of accounting practice. He states that the other companies are not relevant for the purposes of the redundancy situation and criticises the claimant for breaching data protection. At this stage, Mr Jaswal was particularly evasive in dealing with the questions and repeatedly reiterated that the line of question was irrelevant. I made it clear to Mr Jaswal that whilst he did not accept what the claimant was saying on this issue, it was still important that he answer the question so that the company were given a proper opportunity to respond to the claimant's case and that I could consider evidence that was potentially relevant to the reason for dismissal.

29. The claimant also suggested that Mr Lee Jaswal, the brother of the witness, was a director of the company and that he had acted in an inappropriate manner towards the claimant. He described both the claimant and Mr Lee Jaswal as fiery characters but states clearly that the conduct was never specifically raised with him as a concern.

30. It was suggested to Mr Jaswal that whilst a letter was given to the claimant purporting to outline the risk of redundancy on 3<sup>rd</sup> January 2020, the decision had effectively already been made and Mr Jaswal was trying to force the claimant out of the company. Mr Jaswal states that, at the meeting on 3<sup>rd</sup> January 2020, the downturn in the business, the rising debts and loan repayments were all discussed. The claimant states that Mr Jaswal failed to explore other options. However, Mr Jaswal was clear he considered that there was a proper consultation and a genuine redundancy situation. The claimant suggested that Mr Jaswal should have considered the Assistant Manager role as a potential role in the redundancy situation. It is clear that Miss Holland was dismissed at the start of January and there remains a Tribunal case to be heard at the end of the month. Mr Jaswal gave evidence that the claimant could not move into a lesser role as there were no roles available. He states that he was not in a position to consider the receptionist role as that member of staff left a number of months later. Mr Jaswal states the general manager role was removed and that each department now reported directly to him. He explained that Mr Tudgay had been asked to provide aspects of training and to try and improve the business.

*Mr Tudgay - Consultant*

31. I heard from Mr Tudgay he filed a witness statement, dated 30<sup>th</sup> of December 2020. He gave evidence in relation to the allegation that the claimants had failed to properly organise chair drapes and that her actions cost the company money. It was noted though that this did not form part of any claim or counterclaim. He suggested that the claimant had a tendency to lie. He stated that Mr Jaswal contacted him around 3<sup>rd</sup> January 2020 to discuss undertaking a similar sort of role as he had done in Mr Jaswal's other companies, namely, Facebook marketing promotions, and utilising

his knowledge of the sector to improve the business. He gave evidence as to the claimant's failing, in his view, to try and make money for the hotel by up-selling certain items. He states that the claimant could, and should, have obtained a dancefloor through the hotel instead of using a favour to get it from another provider. Again, his evidence on this point was largely irrelevant to the claim.

*Claimant*

32. I heard from the claimant on the afternoon of day 1. The claimant filed a statement dated 31<sup>st</sup> December 2020. She was asked about any occasion in June 2019 when she took time off work to attend bilateral breast augmentation surgery. The claimant accepted that she had surgery. It was suggested that the claimant sought to hide the surgery from her employer. The claimant stated that the operation was a private matter and that she had not sort to mislead the company. She gave evidence relating to her request that she was looking for full salary during the days after her operation. It was suggested to the claimant that she was being untruthful and she was clear in her response that that was not the case. She stated that where there was a shortfall of hours being countersigned, she had indeed work those hours. She stated that she was entitled to receive extra holiday on bank holidays, and other days, in accordance with her contract of employment. She denies that she acted inappropriately in respect of the wedding on 30<sup>th</sup> November 2019. She states that other individuals were involved in the bookings and that it was known by the company that she was friends with the bride. She accepted that a number of the bookings were in her name, but stated this was unsurprising given she had set those bookings up. She states she left hotel at around 7:30pm that day and cancelled the room that was personally in her name. It was suggested that she should be accountable for unpaid items, but she made the point that all of her decision-making was in the best interests of the hotel, for example, the fact that she decided to change the finger buffet numbers for additional canopies, which would work out cheaper for the hotel.
33. She felt that the redundancy situation was a sham. She pointed to what she felt was an incident of illegal behaviour with Mr Lee Jaswal. It was suggested to her that these issues were never raised with Mr Jaswal despite the fact that there were meetings on an alternate weekend basis. It was suggested that there was no proof of her raising these concerns within the bundle. She maintains that, over a long period of time, she held these concerns as demonstrated by the letters contained in the bundle that she had taken by way of screenshot. She states that when Mr Jaswal met her on 3<sup>rd</sup> January 2020, they went around the rooms and discussed handling maintenance, bills, refurbishments and concerns in relation to holiday for other staff members. She states that Mr Jaswal then read the letter outlining a possible risk of redundancy. She then took a number of

items with her, handed over her keys to the property and called her partner. She accepts during the meeting that Mr Jaswal said he needed to make cutbacks, that he was going to be present at the hotel and that he was going to be standing in. She states that it was made clear that redundancy was only a possibility. It is suggested by the respondent that this was a long meeting and formed a lengthy consultation. The claimant does not accept this. The claimant gave information relating to new employment with her partner's property company.

34. The claimant was steadfast that she would have been willing to accept alternative roles rather than face the prospect of having to claim universal credit. She had found it extremely difficult following the dismissal. The claimant was taken to a message in which she opines the hotel will be shut in six weeks – the message was sent post-dismissal. The claimant states that she sent this message in the belief that the alleged illegal activities would be the downfall of the hotel.
35. By this stage in evidence it was approaching 4:30pm. Mr Tudgay made it clear he only had a number of further questions that he wanted to put to the claimant. The claimant though was upset at this juncture and so I asked her whether she would prefer to get her evidence completed on day one or to take a break and return overnight. She informed the tribunal that she would prefer to get her evidence out of the way, so a short break was taken before restarting. She had composed herself in the break. She was asked a number of additional questions. She gave evidence relating to her previous employment history, namely, undertaking a diploma in health and social care, working in a beauty salon, salon management, and working in a factory. She accepted that the only management experience was with the respondent. It was suggested that she may not understand accounting practices at the hotel. She accepted taking photographs of various documents for a rainy day. She anticipated trouble ahead and wanted to safeguard her position. She was adamant that she had not doctored any timesheets to include the Excel spreadsheets that can be found in the bundle.

*Samantha Holland – claimant's witness*

36. At the start of day 2, the Tribunal heard the evidence of Ms Holland. She confirmed the truth of her witness statement. She was asked a number of questions by the claimant. Miss Holland stated that she was present on 3<sup>rd</sup> January 2020 in her role as assistant manager. She gave an overview of the discussion that day. She confirmed that she ran a wedding on 30<sup>th</sup> November 2020. She also stated the Mr Jaswal was aware of the wedding. She confirmed that the claimant had left the wedding at around 7 o'clock following the first dance. Miss Holland states that no wine was served by staff that day. She was dismissed by the respondent on 6<sup>th</sup>

January 2020. In cross-examination, it was suggested that Miss Holland and the claimant were friends, this was agreed. They shared lifts to and from the hotel, and often worked the same shifts. It was brought to my attention that both the claimant and Miss Holland had filed ET1 forms in close proximity.

37. I proceeded to hear submissions from Mr Tudgay and the claimant. The respondent states that the claimant is economical with the truth. I am invited by the respondent to consider that this was a fair redundancy process that has been followed and that there was a genuine reason for the redundancy. The respondent states there is no evidence to show illegal practice. I am asked to consider that the claimant failed to work her contracted hours and that she was not entitled to payment for four days in January 2020, so to reflect the time that she failed to work in 2019. It was brought to my attention that the claimant accepted in her evidence that the normal customers should be charged if they attended their room and then cancelled it. It was suggested that she had done a number of favours for her friend and that these favours had cost the hotel money. I was asked to consider the written evidence of Karen Jones, and it was suggested that she was an impartial witness when she states that the wine was missing during the stock take. The respondent states that this is a half-baked whistleblowing claim, and that the claimant has been deceitful, that when things get tough, she gets aggressive. The respondent says that legal deductions have been made from the claimant's wages and she was fairly dismissed.
38. The claimant invites me to consider everything within the bundle and conclude that this was an unfair redundancy situation. She states that the real reason she was dismissed was she had discovered illegal activity. She also invites me to consider the difficulties with Mr Jaswal's brother. She had a further explanation as to why she had not obtained employment until September 2020 and informed me she was not able to do so by virtue of her ill-health. She eventually felt able to retrain and worked part-time at her partner's company. I have within the bundle her bank statements and benefit payments that she says detail the extent of her loss. She invites me to consider that Mr Jaswal's brother has been involved in tax fraud with different businesses and has been struck off as a company director, I have no evidence of that within the bundle, and it is not something that was previously raised in the course of these proceedings. She says that she is simply defending her position and that everything the respondent has done has been a smokescreen to hide what has been going on.
39. I say at this stage that both parties refer me to statements in the bundle from individuals that have not attended court to give oral evidence. In particular, Carol Jones and Keri Owen. I placed little weight on their

evidence given that they have not been in attendance to give oral evidence.

### **Findings of Fact**

40. In respect of the claimant's contract of employment, her Particulars of Employment make clear that the claimant is a salaried employee. At the time of commencement in 2016, she received £20,000 per annum. Her salary was raised since then to £26,000 at the time of dismissal. There is nothing within her contract that requires a certain number of hours to be completed per week. The claimant states that she would work an average of 50hrs per week. The respondent states she should have completed 48hrs but worked far less. The 48hrs per week, as referred to in the particulars of employment, in my view, only relates to the claimant's ability to opt out of the provisions of the working time regulations – they do not serve as a minimum number of hours in contract. I therefore do not consider there to be a minimum or average number of hours worked. I do not consider that her payment was contingent on set hours and reject the suggestion that the claimant should only be paid for hours that were countersigned. I find that she worked the hours that the business required. I reject the notion that the claimant was effectively entitled to an hourly rate for the hours worked – it makes little sense in the context of her being a salaried employee. I find that she had the flexibility to work the hours that the job required. I find that the respondent was aware of the need for flexibility and, indeed, had the benefit of that flexibility.
41. In terms of the hours the claimant worked, I was referred to timesheets and excel spreadsheets. The respondent asserts that claimant failed to authorise the hours worked by asking another member of staff to countersign hours. The respondent states it is impossible to work out how many hours the claimant works, I agree with this suggestion but consider that there was never ever cause for the respondent to calculate the precise number of hours worked. There are months where the hours authorised are approximately one hundred hours less than the hours the claimant claims to have worked. I reject the respondent's assertion that because the claimant failed to get the hours signed for, that she was not working. There was no disciplinary process followed for failing to work the hours required. No concerns were raised with the claimant regarding the hours she completed during employment. If the claimant was working 100 hours less than she said she was, I have no doubt someone would notice and raise this as an issue. On the respondent's case, it seems to me that the reception staff must have seen the claimant signing in and out and making false declarations for months and months without raising alarm. I consider the respondent's suggestion that she failed to work these hours as fanciful. I find she worked the hours on the timesheets on the basis that

- the timesheets appear to represent the a contemporaneous record of staff working patterns. I consider those timesheets to be an accurate contemporaneous record of the hours worked regardless of whether they were countersigned. I therefore find that the claimant was working the hours that she was contractually obliged to work.
42. I find that the hours in January of 2020 were hours that she indeed did work, regardless of whether the hotel was open to the public. She gave clear evidence in respect of the tasks she completed during that period. I find her account credible on this issue. Regardless, even if she had not attended the hotel on those days in January, I find that it would make little difference. She was a salaried employee. It was the respondent's decision to close the hotel to the public, the respondent cannot simply thereafter decide that it does not wish to pay salaried employees during this period.
43. Having found that the timesheets are an accurate reflection of hours worked, I find that the holiday spreadsheet adduced by the respondent is not. This is mainly due to the fact that the spreadsheet clearly includes a number of dates upon which there are entries on the handwritten documents. I reject the suggestion that the claimant has manipulated the documents, there is no evidence to support this suggestion.
44. It follows that, in light of those findings, the manner in which holiday entitlement is calculated is a pro-rata basis over the course of 12 months and not dependant on hours worked. It cannot be the case that a salaried employee, with no fixed average or minimum hours, and not subject to an hourly rate, must effectively earn her holiday through completion of fixed hours. The calculation by the Respondent is flawed. I find that the correct approach to the calculation of holiday entitlement is to pro-rata from the start of the holiday year through to the date of termination and then to calculate how many days holiday she took. She should be remunerated for the outstanding days.
45. I find that the claimant is entitled to a day in lieu for work on bank holidays, this, as pointed out by the respondent, excludes Christmas Eve. The provision is clearly detailed in the particulars of employment.
46. Given my findings regarding the timesheets, and given that I accept the claimant worked bank holidays, the claimant had accrued 22 days holidays on a pro-rata basis for the year to dismissal. I prefer the evidence of the claimant in that she took holiday on the dates listed at paragraph 20 of her statement, that being 9 days holiday. I find she is entitled to three days in lieu for Christmas day, boxing day and new years' day, making 16 days holiday entitlement outstanding on dismissal.

47. I find that the respondent company was struggling in the later months of 2019 and I find that there was a downturn in the business. I heard evidence from the respondent on this point and I accept his evidence. I also heard from the claimant in that at the meeting on the 3<sup>rd</sup> January 2020, the respondent informed the claimant of the difficulties in the business, the issues with the boiler, the complaints online and the impact on the residents. A number of these financial concerns appear to be accepted, in whole or in part, by the claimant.
48. It is agreed that a wedding took place on 30<sup>th</sup> November 2019 and that the wedding was for a friend of the claimant. The claimant gave evidence regarding the need for her friend to budget. She openly accepted the link with the claimant and made no bones about it. She recorded the fact that the wedding meeting was taking place at her home on the back of the handwritten timesheet. I find that this is a genuine entry on a timesheet that reflects the fact that the claimant had considerable flexibility to go about her employment obligations as she felt necessary. She does not appear to have hidden the meeting, nobody seems to have flagged it at the time. I find that the claimant was allowed to go about her employment exercising her discretion on certain issues, such as wedding meetings and packages, for the main reason that this made good business sense. I gained the impression that the claimant cared about the hotel and its success. I formed the view that she was genuinely trying to improve the business and in organising a wedding for a friend, it seems to me she was actively bringing in income as a result of her connections. I reject the allegation that the claimant was acting in a rogue manner by having meetings outside the hotel. I find it hard to believe that the respondent can criticise the claimant for doing so when the respondent stood to benefit.
49. I find that the claimant was entitled to utilise favours from other suppliers in an attempt to assist her friend at the wedding. It is common for wedding venues to have suppliers attend the venue, it is common for other individuals to provide items that may be placed as centre pieces or favours, or even providing their own decorations as part of a cost saving exercise. I find that there was nothing untoward in the claimant utilising favours from within the trade so to assist in preparing the wedding. I have no doubt that the claimant had many contacts that she utilised for the benefit of the hotel, and having found previously that she was working to the benefit of the hotel, with some flexibility, I have regard to the fact there is no reference to any concern being raised as to the manner she went about her job.
50. I have regard to the evidence of Miss Samantha Holland. She states that no one was serving wine to the tables on the wedding day. She states that the claimant left at around 7pm. Her evidence was not undermined. She struck me as clear and consistent in her account. I accept her evidence.



51. In respect of the events of the wedding, the claimant gave clear evidence as to her actions that day. She states that she left the wedding at around 7:30pm, she was going to stay at the hotel but did not so cancelled the room. I find that to be the case. She states that she was going to pay for wine but the wedding guests made it clear that it would be a waste as there were only a few wine drinkers. She, again, was clear and consistent with regard to the events of the wedding. I find that the Claimant is credible on this point. I note the absence of direct evidence to support the respondent's assertions relating to the events of the wedding. I have taken into account the booking system and viewed those entries carefully. The claimant's name appears on some entries, but this was not unusual. She points out that many people were involved in the organisation of the wedding and that even if she wanted to give away free rooms and drink, people would know about it and raise concerns. She points out that the wedding bookings would change over time, whether that be numbers, children eating or different packages altogether. I find her evidence credible on this point.
52. I have already made the finding that the business was struggling, with that in mind, I turn to the evidence relating to the business adjustments at the time. The claimant states that Mr Tudgay came in to, in effect, complete almost exactly the same role as her prior to being dismissed. Mr Jaswal and Mr Tudgay dispute this. They state that different tasks are undertaken with the respondent effectively delegating elements of the general manager role to supervisors. He states that the role of general manager has been consumed by the director and through delegation. I find that whilst it is clear that the tasks of general manager remain, taking bookings etc, that the tasks have now been taken over by other individuals in different departments and that the role of general manager does not now exist. I find that Mr Tudgay's involvement is largely focused on the areas of business improvement rather than simply undertaking the entire role of general manager. In light of the evidence of difficulties in the business, I also find that this was a genuine redundancy situation in which it was determined that there needed to be a restructuring in light of business needs so that the requirement of the business for the number of employees diminished, namely, the role of general manager.
53. It is not the function of the Tribunal to decide how a business should be managed. Mr Jaswal, I accept, made a business decision to identify an area of savings, namely, in the role of general manager, and took steps to make the savings accordingly.
54. However, the speed at which the decision making was made defies logic. The respondent asks the Tribunal to conclude that there was a genuine consultation on 3<sup>rd</sup> January 2020 and that dismissal was determined on 5<sup>th</sup>

January 2020 following extensive consultation. I reject that suggestion for a number of reasons. It appears to me that the decision to make the claimant redundant had already been made prior to the 3<sup>rd</sup> January 2020. In support of this is the decision later that day to contact Mr Tudgay and request assistance to the newly structured business. Further, the claimant gave over her keys and collected items. A very clear impression is painted that the decision was made prior to the 3<sup>rd</sup> January 2020 that the role was to no longer exist and that the inevitable consequence was that the Claimant would be made redundant. The extremely short timescales do not give any realistic opportunity to consult. I have regard to the following:

- i) There is no redundancy plan, or restructuring plan, put before the Tribunal.;
- ii) No notice was given to claimant of the meeting on 3<sup>rd</sup> January 2020;
- iii) She was somewhat ambushed by the fact that a meeting was due to take place and had no opportunity to formulate questions or points she sought to make;
- iv) The letter was read and then handed to her, she was not afforded a proper opportunity to raise any issues;
- v) There is no evidence to suggest that the views of the claimant were taken on board, it supports the view that there was no meaningful consultation;
- vi) There is an absence of proper discussion of other roles;
- vii) There is no information as to how it was decided that the role of general manager would be the impacted role.

55. I have regard to the size and resources of the company. This is not a large company with significant HR resources, however, Mr Jaswal is an experienced business owner. The Tribunal does not expect perfection from the company making redundancies but I find that the process that was followed amounts to an unfair procedure that was flawed from the outset and represents a premeditated decision to make the role of general manager redundant, it therefore made the outcome of the process inevitable.

56. I do though have to consider what the outcome would have been had a fair process been followed. In my view, given the evidence of Mr Jaswal and Mr Tudgay, there is an absence of an alternative role. I remind myself the respondent does not have to create a role. The Tribunal is loath to

interfere with the internal business and strategy decisions of a company, I find that the outcome of any fair procedure would have been the same, namely, that the claimant would have advanced her views in opposition, the claimant would have said that there are no alternative roles, and by virtue of the restructuring, the claimant would have been made redundant.

57. I find that the claimant clearly had concerns regarding the business dealing of the respondent. There are a catalogue of issues relating to other companies owing money and these being brought to the attention of the respondent over a period of time. I find that this was the case. However, there is insufficient evidence for me to find that this concern was raised formally with the Respondent. I find that this was a situation where post was being received, bills were being chased, and it was for the respondent to make arrangements to deal with them. There is nothing within the documentary evidence to suggest that the claimant raised any concerns formally by way of complaint, or otherwise, that respondent was engaging in illegal behaviour or otherwise.
58. In respect of the allegation that inappropriate comments were made by the brother of Mr Jaswal, I have not heard evidence on this issue from the claimant or from Mr Lee Jaswal. It is clear from the documentary evidence that there were difficulties in the relationship between the two individuals, and I have no doubt that the claimant was upset as a result of an incident, but I am not in a position to make any findings relating to the nature of any alleged incident or incidents. Firstly, the allegation has not been actively pursued in a formal sense as whistleblowing, it was not raised as an issue at the hearing in June 2020 and is not raised in the papers in an active sense. Secondly, it seems to me that the claimant continued working for the respondent following the alleged incident in the middle of 2019 without issue. I do not have to make any findings relating to the specific incident, what I must consider is whether, in the context of all of the evidence, whether the reason for dismissal was redundancy or whether it was another reason that was not potentially fair.
59. In balancing up the evidence, it is for the respondent to prove the reason for dismissal. The claimant may present evidence in an attempt to demonstrate otherwise and she has done so. However, in light of the findings above, I conclude that the reason for dismissal was redundancy and not, as the claimant suggests, knowledge of other businesses and directorships, nor was it difficulties in the relationship with Mr Lee Jaswal. Based on the documents before me, the evidence in respect of the claimant's knowledge of other companies seems to be limited to correspondence relating to debts directed to the respondent company's premises. It is difficult to see how, if the claimant was concerned in respect of the behaviour of Mr Jaswal, that Mr Jaswal would be best served by dismissing the claimant and thereafter leaving her unemployed.

If the claimant had knowledge of illegal behaviour, and the respondent was concerned as to the extent of her knowledge, it seems to me more likely that the respondent would try and keep the claimant on amicable terms rather than to run the risk of antagonising her and thereafter bringing her concerns to the attention of HMRC or other third parties. The evidence in totality leads me to the conclusion that redundancy was the reason for dismissal.

## **Conclusions**

60. I therefore conclude as follows:

- a) The reason for the dismissal was redundancy, this was a genuine redundancy situation in which the respondent was seeking to restructure in light of a downturn in the business. The identification of cost saving areas and the need to address the role of general manager was a business decision within the reasonable band of responses;
- b) The process followed was defective and falls outside the reasonable band of responses. There was no consultation, no notice, no proper engagement with the claimant and no real consideration of alternative roles. I conclude that the process was procedurally unfair;
- c) I therefore conclude that the claimant was unfairly dismissed;
- d) In the event that a proper process had been followed, I find that the same outcome would have been reached. I therefore must consider how long a fair procedure would have taken in the circumstances. Given the issues in dispute between the claimant and respondent, I find that there would have been a number of meetings to address the claimant's concerns. Any meeting should have been on notice with the opportunity to take advice, any decision may have given rise to further appeal or review. I conclude that a proper procedure would have taken one month and I accordingly find that the claimant be entitled to another months wages in the sum of **£1720.76 net.**
- e) By virtue of my findings regarding the contractual relationship and the fact that the claimant was salaried, the claimant is entitled to remuneration for the period she worked in January 2020. This was effectively four days. The claimant received £26,000 per annum, a daily rate of £100 gross. I therefore award her **£400 gross.**
- f) In respect of the deduction of £1064.60, I conclude that this this was an unlawful deduction from wages. It is arguable that the respondent has the power to withhold or deduct sums owed to the company as per the terms of the particulars of employment. This document would have been

**Case Number:**

available in advance notice to the claimant. However, there must be justification for any deduction, and in this case, there is not. My findings make it clear that the claimant acted appropriately in respect of the wedding and I consider, based on the evidence, that the claimant is not liable to pay for those items related to the wedding booking. I therefore award the Claimant the **£1064.60 gross**.

- g) Having made findings in respect of holiday entitlement above, and accepting the timesheets, I conclude that the respondent's rational for calculating holiday entitlement is fundamentally flawed and I prefer that of the claimant. I conclude that, given the timesheets, she worked on many of the days that the respondent has recorded as leave. I therefore make an award for 16 pays holiday entitlement in the sum of **£1,600 gross**.

Employment Judge **G Duncan**

Dated: 8<sup>th</sup> February 2021

JUDGMENT SENT TO THE PARTIES ON 12 February 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS