Case Number: 2203405/2020

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr F T Stacy	**v**	**Octavius Finance Limited**

Heard at: London Central **On**: 17, 18, 19 and 20 May 2021

Before: Employment Judge A James
Ms C I Ihnatowicz
Mr I McLaughlin

Representation

For the Claimant: Ms A Holland, lay representative

For the Respondent: Mr R Dennis, counsel

JUDGMENT

(1) The claims for whistleblowing detriments (s.47B Employment Rights Act 1996 are not upheld and are dismissed).

(2) The claim for whistleblowing dismissal (s.103A Employment Rights Act 1996) is not upheld and is dismissed.

(3) The claim for wrongful dismissal (Employment Tribunals (Extension of Jurisdiction) Order 1994) is not upheld and is dismissed.

(4) The claim for unauthorised deduction of wages (s.33 Employment Rights Act (ERA) 1996) in relation to the sum of £9,200 is not upheld and is dismissed.

(5) All other wages/breach of contract claims (s.13 ERA 1996/1994 Order) are not upheld and are dismissed.

REASONS

The issues

1. The claims were for whistle-blowing detriments and dismissal, wrongful dismissal, and unpaid wages/commission. The agreed issues are set out in Annex A.

Fact findings

2 The hearing took place over four days. Evidence and submissions on liability were dealt with on the first three days. It was arranged that on the fourth day, the tribunal would give its decision and reasons and, if the claimant was successful, would go on to deal with remedy, if time allowed.

3 The tribunal heard evidence from the claimant and Ms A Vines; and for the respondent from Ms N Basiratpour, Managing Director and co-founder of the respondent company; and Mr R Jayaratne, also co-founder of the business. There was an agreed trial bundle of 437 pages. Two pages were added during the hearing.

4 The respondent company is owned by a parent company, Octavius Group Limited, which Ms Basiratpour and Mr Jayaratne own jointly in equal shares. The parent company also owns Octavius Renewables Ltd, a recruitment consultancy for the renewable energy sector. Ms Basiratpour runs Octavius, while Mr Jayaratne runs Octavius Renewables. Both companies share infrastructure and office space and work very closely together, although in different areas of recruitment.

5 The claimant started work for the respondent on 11 February 2019 in the role of Recruitment Consultant. About four to five months later he was promoted to the role of Principal Recruitment Consultant. He did not have and nor was he paid for any line management responsibilities. The claimant was line managed by Ms Basiratpour. The claimant's role mainly involved recruitment of candidates for finance sector clients of the respondent.

6 The claimant's contract of employment which he signed and accepted on 31 January 2019 contained the following clauses.

7 Clause 7.2 says in relation to salary:

> *The Employee's salary shall accrue on a daily basis and be paid in equal instalments monthly in arrears on the 28th of each month by electronic funds transfer to the bank or building society account nominated by the Employee. less deductions for PAYE. National Insurance contributions and any other deductions which the Company is required to make.*

8 Commission is dealt with in clause 9 which states:

> *The Employee shall be entitled to commission under the Company's Commission Scheme, full details of which shall be provided by the Company and which may be amended from time to time.*

The Company reserves the right to exclude the Employee from participation in the Commission Scheme at any time in accordance with the terms of the Commission Scheme as amended from time to time.

9 There was in fact no scheme in place save for a one page document which sets out the percentage commission to be applied, depending on the total amount secured by the employee and value of each specific deal. The terms of that are not in dispute in relation to the matters before us.

10 Under clause 17.1.1 which deals with notice, the claimant was entitled to one month's notice – but subject to clause 20.

11 Clauses 20.1 and 20.1.5 and 20.2 set out the provisions in relation to automatic and summary termination. The material parts state:

20.1 The Company shall have the right to terminate the Employment at any time without notice, compensation or payment in lieu of notice and without payment in lieu of untaken holiday entitlement in excess of statutory leave entitlement in the event of gross misconduct by the Employee or otherwise meriting summary dismissal including but without prejudice to the generality of the foregoing: ….

20.1.5 being guilty of any misconduct that is in the reasonable opinion of the Company serious misconduct or of any material breach or non-observance of the provisions of this Contract.

20.2:*The Employee shall have no claim against the Company in respect of the termination of his Employment by the Company pursuant to this clause 20.*

12 Clause 22.1.3 defines confidential information as follows:

"Confidential Information" shall include, but shall not be limited to, intellectual property, information in any form (including databases, paper, electronically stored data and information committed to memory) relating to the Company's financial position, business plans, sales information, fee structures, client contacts, client invoicing procedures, client payment arrangements, contracts with clients and other organisations, contracts with employees, temporary workers, Candidates, Contractors or agents, management accounts, responses to tenders, speculative projects and any other information that has been notified to the Employee by the Company as being confidential.

13 Clause 25.5 deals with data protection and states:

The Employee agrees to observe strictly any data protection policy. information security policy and/or any instructions issued by the Company with regard to any aspect of data protection, privacy or information security activity undertaken by the Company and the Employee agrees not to do anything or permit anything to be done which might jeopardise or contravene the Company's liability under the Data Protection Act 2018 and the GDPR regulations (as amended from time to time) and the Employee acknowledges that any failure on his part to adhere to the provisions of this clause 25 can lead to formal disciplinary action.

14 Clause 27 deals with the Disciplinary Procedure. It states:

The Company's Disciplinary Procedure is attached in Appendix 2 and forms part of the Employee's terms and conditions of Employment.

15 The disciplinary procedure contains the following examples of Gross misconduct at paragraph 3.3:

1) Theft/Embezzlement/Dishonesty/Fraud

2) Unauthorised possession of Company property or facilities …

7) Serious breach of Company rules …

13) Serious breaches of the Company's rules and procedures (including health and safety rules)

14) Any serious act which breaks trust and confidence or which brings, or is likely to bring the company into disrepute. …

These examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

16 The respondent describes itself as a boutique specialist head-hunting firm in the finance sector. When the claimant was recruited, there was just one other employee in the business in addition to the two directors; at the time of the claimant's dismissal in March 2020, both companies between them employed just four full-time employees including the claimant and one part-time employee.

17 By March 2020, the coronavirus pandemic was starting to have a major effect on society and on business. The future at that time was very uncertain, with a great many unknowns as to how the pandemic would unfold.

18 On 13 March 2020 the claimant worked from home in the afternoon. He used his work laptop when working from home. OneDrive is a cloud-based file storage platform that the respondent's employees had access to and which is linked to their work email accounts. The package had relatively recently been installed on the claimant's work laptop. He synched his documents to OneDrive in order to be able to access work-related documents at home.

19 On Friday 20 March Ms Basiratpour sat down with Mr Stacy as there had been some incidents with his colleagues Ryan Watson and Aodhan Kelly where Mr Stacy had been thought to be scare-mongering about the pandemic by telling them the week before that they should not be coming into the office because of the virus, and asking them 'what are you doing here' when they did come in. They had both subsequently expressed concerns about coming into the office to Ms Basiratpour.

20 During this meeting, Ms Basiratpour stressed to Mr Stacy that she and Mr Jayaratne saw him as part of management, unlike the other staff, because of his greater experience. She said to him that if staff were concerned at all about the situation, he should come and discuss this with management and should avoid causing a stir about things. It was important to Ms Basiratpour and Mr Jayaratne that the staff felt supported and that the company retained their confidence through the uncertainty. We find that what Ms Basiratpour was trying to say by this was that the claimant should show some leadership and support management, rather than 'wind staff up'. No doubt the claimant had some genuine concerns about the pandemic and what it meant for working practices. But Ms Basiratpour wanted the claimant to work with management

rather than against them.

21 The furlough scheme was announced by government on 20 March 2020. On 23 March 2020, at 12:33 Ms Basiratpour emailed the respondent's accountants asking whether employees can work whilst on furlough. The email reads:

> *We had a few questions however...*
>
> *> does this mean [staff] cannot work at all? Or can they still deal with client queries on email during this time?*

22 In response, Mr Masood asked if she and Mr Jayaratne were available for a quick conference call. In a reply sent at 19:29, Ms Basiratpour told Mr Masood that she was free for a call on 24 March but Mr Jayaratne probably wasn't.

23 Boris Johnson announced the first national lockdown in response to the COVID-19 pandemic at 8pm on 23 March. Following the announcement, Ms Basiratpour sent a WhatsApp message to the Octavius WhatsApp group at 21:10, saying: *"We will be speaking to the accountants tomorrow … We are planning on making all of you furloughed employees … The plan is to carry on business as usual but from home …"* Ms Basiratpour's evidence, which we accept, was that her intention was to reassure staff; to let them know that the intention wasn't to just dismiss them. Ms Basiratpour was not sure at that stage if employees could still work while on furlough. She was still checking that with the accountants as evidenced by the email referred to above. She was concerned about the survival of the business during the coming period due to the potential downturn in the recruitment business.

24 The respondent's plans as to how to proceed were in the formative stage at this point. They were not set in stone. Amongst other things, it depended on the advice from the accountants. In the event, only one person in the business was furloughed, Mr Watson, between 7 April and 7 September 2020.

25 The claimant however interpreted the message as meaning that he would be expected to work as hard as ever, but from home, while being on furlough. He therefore carried out research on the government website, as to whether it would be possible to work from home, while also on furlough.

26 The claimant did not however raise these concerns with Ms Basiratpour or Mr Jayaratne that evening. Instead, he replied to the group asking Ms Basiratpour at 22:24:

> *Hi Nat, thanks for sending this message through. Having had a quick google on this, I was just hoping for a bit more information. What would be the expectation of us in terms of output for the interim period whilst we are on furlough and how would this impact any commission due during this time?*

27 In a response sent at 22.27 Ms Basiratpour stated:

> *It wouldn't impact your commission at all. The government pays 80% of your wages and we pay the other 20% plus anything else on top that you earn. Therefore if you are bringing in deals you will be paid fully on them. By all means people are able to do the bare minimum and there's not much we can do about it but do remember that we want a business to be here at the end of it and we never expected any of you to join for the base salary. There are also many other overheads that need to be paid on top of the wages which can only be done so if together we are bringing in deals.*

28 The content of that message indicates that Ms Basiratpour was still unclear as to how much work the business could expect employees on furlough to carry out. That was something she was waiting to hear from the accountants about, as her earlier message had made clear. In a response on the group chat at 22:29 the claimant stated: "*Awesome, thanks*".

29 The message in reply on the group chat from Ms Basiratpour did not indicate she was annoyed. However, in light of the conversation Ms Basiratpour had with the claimant on 20 March 2020, she was in fact annoyed by the claimant's message. She was not sure what the answer was but had felt compelled to say yes in order to prevent panic. She wanted the claimant to raise such questions with her directly in future. Therefore Ms Basiratpour sent a WhatsApp message to the claimant's personal WhatsApp account at 22:49 saying:

> *Hi Freddie, before writing on groups going forwards can you please run any questions by myself and RJ. We spoke on Friday about you being more part of the management team rather than the employees and it's times like this that you're required to demonstrate it. Thanks. …*

30 Although the claimant did not raise any concerns with Mr Jayaratne or Ms Basiratpour that evening about the lawfulness of working whilst on furlough, he did discuss those concerns with his colleagues. He contacted them, and arranged a group WhatsApp call to discuss the situation later that evening.

31 Mr Jayaratne stated at 23:15

> *As Nat says, whilst the government will be paying 80% of your wages (hopefully we still haven't has (sic) confirmation of this) we still have to pay the other 20% plus all the other costs of having you guys as employees therefore we need to see some value in us doing that vs just making you redundant. We are happy to offer a third option of unpaid leave whilst this goes on …*

32 On 24 March 2020, at 07:17, a further WhatsApp message was sent by Ms Basiratpour to the group chat stating:

> *Just to echo what Mr Jayaratne has said here I haven't had any confirmation that we are even able to list you as furloughed so we expect nothing to change from you whatsoever. Today is a working day just like any other. The reason we've given you the information in my first message is so that you are all aware of what we are doing as a business as I would hope that you all feel that this is your business too and want it to not just 'survive' but also prosper. We both feel that being open and honest during uncertain times is the best thing to do rather than make decisions that you do not feel a part of. By asking you to dig deep I think it's clear what our expectations are in terms of output. We're hoping that each you can demonstrate that you can receive the information we're giving you as adults and not just employees".*

33 At 8:33 on the morning of 24 March 2020, Ms Basiratpour received an email from Microsoft Online informing her that the claimant *"has requested a password reset to be performed for their account:* ***freddie@octaviusfinance.com*****".** Ms Basiratpour found the request odd and it caused her to be suspicious as to what the claimant was up to. The respondent is a small business and took the view that it needed to know employees' passwords so they could access emails during holiday periods.

34 It is not in dispute that the password was the same for all Microsoft accounts, including OneDrive and Outlook; as well as for logging into the computer, the phone system and the CRM (case management) system. This was the first time a password reset had been requested during Mr Jayaratne's time in the business. Until then, staff asked Mr Jayaratne for a password to be changed, which he did as administrator and then contacted them with the new password. Every two months or so the password for Voyager was reset, and then had to be re-launched. To do that, a PIN was required, and Mr Jayaratne would go around the office and reset it. There had never previously been an issue with OneDrive.

35 At 08:41, Ms Basiratpour WhatsApp messaged Mr Jayaratne saying the claimant had tried to change his password and stated: *"Maybe he doesn't want me to see his emails…. defo gonna check them now when I get in".* Her intention was to check his emails when she got into the office to ensure he was not trying to hide something. She had emailed Mr Jayaratne because he handles the IT issues for the respondent, including any problems with logging in.

36 At 08:45 Mr Jayaratne WhatsApp messaged the claimant asking why he had tried to change his password. The claimant replied:

> *C: I put all my entire documents on the pc on there so I could access it [08:46]*
>
> *RJ: It depends what account you've used on one drive [08:47]*
>
> *C: Freddie@octaviusfinance.com [08:48]*
>
> *RJ: If you've used your email account then the password will be the same.*

37 In the light of the above, and in particular, because this was the first time a password request message had been received, Mr Jayaratne and Ms Basiratpour remained suspicious about what the claimant was up to.

38 At 09:35, a further message was sent by Ms Basiratpour to the claimant saying she wanted to speak to him at 11am that day. The message reads:

> *Hi Freddie, I'm not sure if you've seen your personal email but I've scheduled a call for us at 11am. I will call you on your mobile. Please let me know ASAP if there is a reason that the time does not suit.*"

39 On 24 March 2020 at 11:00 the claimant and Ms Basiratpour spoke by telephone. It is not in dispute that during that call the claimant said something to the effect of "I have spoken to an employment lawyer and had a WhatsApp call with the team about this" and that he was certain that making employees work while furloughed would be a breach of the furlough scheme's rules. He also said that he "was just looking out for the business" and "didn't want to do anything illegal", and that it would be "literally fraud" to keep employees working while furloughed.

40 The claimant accepts he said words to Ms Basiratpour to the effect that:

> *I think that you sending a WhatsApp message about this to the team was really unprofessional and you should have done it better and checked that you had all the answers before sending a message. Particularly a WhatsApp message, because important company messages should be emailed and not sent via WhatsApp.*

41 Mr Stacy also told Ms Basiratpour that others in the team had been messaging him. She told him not to speak to other employees about this again, and that it was not his job to call her unprofessional for sending a WhatsApp message. She said words to the effect of "*Freddie, we're trying to keep this business alive – we don't know what the next year's going to look like – and you're making it very difficult*". The call only lasted for about ten minutes. Ms Basiratpour felt she had been 'told off' by the claimant and was annoyed by his attitude towards her. She was also annoyed that he had arranged a team WhatsApp call. She felt that again, the claimant was stirring things up when he should be working with her and Mr Jayaratne.

42 It is not in dispute that Ms Basiratpour raised her voice during the call. It is also not in dispute that Ms Basiratpour was annoyed by both what the claimant said and what she perceived as his insubordination; and she raised her voice in order to cut him off from his repeated suggestion that she was asking him to do something illegal.

43 There is a dispute about whether Ms Basiratpour mentioned during the call that she was going to speak to the accountants about working whilst on furlough. We accept Ms Basiratpour's evidence that this was mentioned. This is supported by the email chain referred to above (and further below) with the accountants which shows that enquiries were indeed being made. It is also supported by what is said in the claimant's appeal letter, written with the assistance of legal advice. The entry at 11:00 24 March 2020 states:

> *I set out the concerns that my colleagues had raised with me, including the issues that we had been having with the IT system and the fact that we wanted to carry on working but everyone was very concerned about being furloughed and potentially being asked to break the law. I therefore asked her to clarify the business' expectations during furlough leave when she spoke to the accountants.*

44 During the call, the claimant was told by Ms Basiratpour that he was not on furlough. We accept that he thought it was likely that he would be put on furlough and would be expected to work normally from home. We return to that belief in our conclusions. Ms Basiratpour did keep telling the claimant not to question her authority; but that was because he was indeed questioning her authority.

45 At the end of the call, the claimant was told by Ms Basiratpour that she would speak to Mr Jayaratne and he would hear from her later.

46 At 11:25 on 24 March 2020, the claimant took a screenshot of a search on the respondent's CRM system, Voyager, and emailed it to his personal account. The screenshot shows the names and other details of the top 28 candidates in his specialist area – i.e. fundamental bottom-up global equity candidates.

47 The explanation given by the claimant in his witness evidence is that:

> *At one point I sent a small list of names to contact to my personal email rather than my work email by mistake. It was not a long list and only contained names of candidates I was going to speak with that morning ahead of my call at 2pm and contained no other data. - I didn't think anything of it as I had sent emails to my personal account for work in the past and we had not ever been given any training otherwise.*

As we shall see below, that contrasts with what he said in the disciplinary hearing and in the hearing before us. Further, there was no email sent back from the claimant's personal email account to his work email account so that the screen shot was available in his work email account for use that day.

48 The claimant said he sent emails from his work to his personal account regularly. However, no emails were provided to us to suggest that such confidential information had been sent by the claimant before. We were referred by the claimant only to two emails from his work email account to his personal email address. One, sent on 22 February 2019, attached a letter regarding pension contributions. The other is dated 16 August 2019, and contains a link to an article in The Hedge Fund Journal about hedge fund managers of the future. Neither email contained confidential information belonging to the business.

49 Shortly after the call with the claimant, at 11:33, Ms Basiratpour emailed the respondent's accountants asking again whether employees can work whilst on furlough. The email reads:

> *Thanks Irfan. Question. Are we expected to pay the other 20% of wages if a worker is furloughed? And is there anything preventing that person from still voluntarily doing some work from home? All of our guys have laptops so they can do some stuff but wouldn't be working at full capacity.*

50 Around this time, having carried out a search, Ms Basiratpour discovered that the claimant had sent a screenshot of candidates to his personal email address. Ms Basiratpour explains the significance of that in her statement and we accept this evidence:

> *In the recruitment industry, everyone knows that candidate data is extremely sensitive. Not only is it candidates' personal data, but it is the lifeblood of the industry: the ability to find good candidates, match them to a suitable job, and court them successfully, is each recruitment consultancy's key to success. All of employees, including Mr Stacy, knew this and would have heard stories, in our office and elsewhere, of people being dismissed for trying to make off with candidate data. The number one rule of recruitment is that you do not take your employer's data.*

51 Subsequently at 11:55 Ms Basiratpour WhatsApp messaged Mr Jayaratne asking him to lock the claimant out of his emails and Voyager because he had emailed himself a list of candidates. Mr Jayaratne decided to lock everyone out, in case the claimant used their accounts to access the system which were in the same format and used the same password.

52 At 13:28 the respondent's accountants emailed Ms Basiratpour and Mr Jayaratne saying employees cannot work whilst on furlough. They quoted government guidance which stated:

> *To qualify for this scheme, you should not undertake work for them while you are furloughed*.

53 At 14:51 the claimant emailed Ms Basiratpour to ask what to do with the call he had booked in for 4pm:

> *What would you like to do regarding the global alpha [client] call at 4pm today? Happy to take it but let me know what you would prefer, I haven't had access to any emails or system since 12*.

The claimant was told that Ms Basiratpour would deal with the call.

54 Ms Basiratpour sent an email to the claimant's personal account later that afternoon about the need for a telephone call to "*discuss an issue with you*" the next day.

55 Mr Jayaratne and Ms Basiratpour carried out a search for any further emails containing confidential information but nothing else was found. It was found however that the original email had been deleted by the claimant by the time the search was carried out.

56 Ms Basiratpour had not dealt with disciplinary issues before so she sought advice from friend in HR, a Mr Maynard and another acquaintance. She took it step by step and relied on their advice.

57 On 25 March 2020 there was a discussion between Ms Basiratpour and the claimant about an alleged breach of GDPR. During the telephone call at 11 am Ms Basiratpour outlined to Mr Stacy the allegation that he had sent confidential candidate data to his personal email address. This is reflected in a letter that she sent to him by email at 11:30 that day, in which she suspended him from work (on full pay) pending a disciplinary hearing.

58 The claimant was also sent a letter confirming that he was to be suspended pending the outcome of the investigation.

59 The claimant was invited to a disciplinary hearing in an emailed letter sent at 16:53 on 25 March 2020. The hearing was arranged for 27 March 2020 to discuss an allegation of *"Theft of confidential data resulting in gross misconduct".* This related to his email sent at 11:25 on 24 March. He was told that he had the right to bring a colleague or a trade union representative. The letter also states:

> *Prior to the hearing and further action (if taken) you should refrain from discussing with your colleagues or customers or any contacts who are associated with Octavius, this matter (except if you seek support from a workplace colleague), as it should be kept confidential. Any potential breach of confidentiality may be considered under the disciplinary policy.*

60 On 26 March 2020 at 14:55, Mr Maynard advised Ms Basiratpour, to the effect that the claimant did not have the right to be accompanied by a trade union representative but only by a colleague because that is what his contract said. The email states:

> *The disciplinary procedure to follow is the one that he agreed when he signed his contract, other platforms refer to generalised situations not the one into which he willingly contracted. The procedure specially refers to a colleague, so he can nominate one if he wishes. Non Octavius persons will not be allowed to attend the hearing.*

61 That is reflected in the email sent by Ms Basiratpour to the claimant on 26 March 2020, at 18:47:

> *Again I must reiterate, this matter is governed by the company's disciplinary procedure, which is something to which you willing agreed when you signed your contract of employment, and not by ACAS guidelines on discipline and grievances at work as these are guidelines for when there is no disciplinary procedure in place. We will be working by the company's disciplinary*

procedure which you have signed and only be allowing you a work colleague as your representative, please see the company's disciplinary procedure in your signed contract for more details. If you refuse to attend tomorrow, the meeting will go ahead in your absence and a decision will be taken in your absence. Full meeting minutes will be made available after the meeting tomorrow.

62 The claimant queried this by reference to the Employment Relations Act 1999, in an email sent at 20:02 on 26 March 2020:

Thanks for email and I do appreciate and have gone through the disciplinary procedure that you have in place. As per Section 10 of the Employment Relations Act 1999 I have the legal right to be represented by a trade union rep at this hearing.

I would appreciate further time to allow me a chance to speak with my union as due to the on-going COVID-19 situation, I have barely been able to seek general guidance on this matter let alone discuss the situation with them in detail and confirm that they can make the call tomorrow morning.

63 Ms Basiratpour replied to the claimant at 20:27 as follows:

Can you please provide details of which trade union you believe you are a part of and referring to? As I am sure you are aware for us to consider letting you bring your trade union rep you must provide evidence to us that you have been a long term and active member of such union such as long term membership payments and attendance of meetings.

As the employees of Octavius are not represented by a trade union, one of your colleagues attending as your companion is sufficient to satisfy Section 10 of the Employment Relations Act 1999. The employees of Octavius are working as normal tomorrow and are fully available to act as your companion if you wish to reach out and ask one of them to be such. This also could have been done at any point since we sent the letter to you yesterday.

As such, the meeting will be going ahead as planned.

64 On 27 March 2020, a disciplinary hearing took place between the claimant and Ms Basiratpour. Mr Jayaratne was also present too but was not involved in the decision-making following the meeting.

65 The clamant said in the disciplinary hearing, in relation to the list sent to his personal email address:

FS: They were very good candidates and they are relevant to jobs I am working at the moment.

NB: Okay, can you give us some examples?

FS: If you give me two seconds I just need to bring up your email so I have got….so so a good example could be [RL] who is the third candidate down, he is a LATAM PM working at [name]. I currently have a LATAM equity analyst position that I am trying to source for and thought he would be a good sort of candidate for and also I have recently registered a call with a client in Canada who is looking for an emerging market small cap PM so I was going to talk to [RL] regarding that position as well. The second, the candidate down below there [TC] was he is a long short FTSE analyst working at [name] covering

training and TMT I wanted to speak to him regarding a platform position and then also another position that I wanted to run past him which was more speculative. The candidate below him is [CS], he is a emerging market PM working at [name], he speaks Chinese but I was going to speak to him and clear him for the position that I had in Canada. The candidate below him is [NS] … he emailed he interviewed…

NB: So, So just… just to be clear what… what search gave you the result of that candidate list?

FS: I…I searched bottom up, equities, very good candidates but I think that was the search that I ran. [Note, initials of candidate names used above and name of employers removed to preserve confidentiality]

66 Ms Basiratpour was not convinced by that explanation. 'Bottom up' is a broad denomination for analysts who look at company fundamentals – 'bottom up' therefore, rather than, for instance, specialists in macroeconomics. Mr Stacy worked in the former area only. As Ms Basiratpour stated to us in cross examination, the claimant's explanation, did not make sense to her. It was "*like giving someone a potato when they've asked for crisps*".

67 Further, the search was in her view not relevant for the 4pm call because:

> *No-one searches in this way if looking for candidates for specific jobs. You would not bring up a list of very good candidates – using the VGC code. Why on earth would you do that if searching for something specific – maybe one or two – but you'd never do that search for any one of the jobs.*

68 As for other roles, Ms Basiratpour told us and we accept that it was more likely than not that if a search was not carried out using other relevant codes (i.e. codes other than the VGC code), that the results would not be relevant.

69 Before us, the claimant accepted that the candidate list was a list of the best and most valuable clients on Voyager in his area. As for the job in Montreal, he told us that it was 'pretty niche'. If a candidate did not match everything for that position, they still had to be very good even to be considered for it. He also told us: "*Other very good candidates would know others*". Implying that he could use this list to call candidates to ask them if they someone who might be suitable for the Canada role. We did not find that explanation convincing and it is another example of how the claimant's explanation for his sending of the email kept shifting.

70 Further, the claimant stated in cross examination, when asked if he ran the search for the job relating to the 4pm call that the screen shot was for that particular job [i.e. the one at 4pm] but those candidates were not relevant to other positions. Shortly afterwards the claimant stated that the screen shot search: 'was *relevant to that call at 4 but happen to be similar to other similar jobs*'. Again, he contradicted himself in a short space of time.

71 This is also to be contrasted with what the claimant said in his witness statement at paragraph 22:

> *At one point I sent a small list of names to contact to my personal email rather than my work email by mistake. …. I didn't think anything of it as I had sent emails to my personal account for work in the past and we had not ever been given any training otherwise.*

72 But in the disciplinary hearing the claimant accepted that sending the list was a serious error:

> *I sent it to my personal email address so it was a… it was a… it was a really bad mistake and I hold my hands up to say that that was…*

73 At this hearing the claimant stated that it had:

> *Never been an issue to use personal accounts for data so long as it was not shared with anyone else*.

74 For the first time at the hearing of this claim, the claimant raised a further explanation, that the list was sent so he could duplicate his working in the office with two screens, by using two laptops at home. This was the first time that explanation was raised. It is not set out in the claimant's statement for this hearing, in the disciplinary hearing, or in his appeal against dismissal letter (prepared with the benefit of legal advice). He also stated that he deleted the email from his Gmail account when he realised he had sent it there instead of his work Outlook address. But if so, how could the claimant work on that if he was locked out of the work systems? As noted above, the list was not sent by the claimant back to his work Outlook email address once he had realised his mistake. This would have been necessary since he had deleted from his Outlook account.

75 On the same day, following the disciplinary hearing the claimant was dismissed without notice. We find that the dismissal decision was made by Ms Basiratpour alone.

Withholding of wages - £480

76 The respondent subsequently withheld £480 from the claimant's final pay, pending the return of its equipment. This was Ms Basiratpour's decision. On 15 May 2020, the respondent paid to the claimant the £480 withheld from his final salary, upon the return of its equipment.

Appeal against dismissal

77 On 3 April 2020, the claimant appealed against his dismissal.

78 On 19 April 2020, the claimant was offered a role with his current employer, Lawbrook Partners.

79 The appeal hearing took place on 24 April 2020 via zoom, with Mr Jayaratne. The appeal was dismissed on 1 May 2020.

Commission

80 The claimant clarified at the hearing that his claim in respect of unpaid commission was limited to the candidates BC and JL and for the sum of £9,200. The payments in respect of these candidates were received by the respondent before his dismissal and shown on a draft pay slip sent to the claimant on or about 17 March 2020. It is not in dispute that had the claimant been employed on 28 March 2020, when wages were normally paid (contract, clause 7.2), the claimant would have been paid that commission.

81 We accept in relation to the draft payslip the evidence of Ms Basiratpour that the claimant did not like her talking about figures in front of his colleagues. He would message her about forthcoming commission and she would pass on the request to payroll who would then email a draft payslip to him.

82 Crucially, we find that the practice in the recruitment industry is that commission that would otherwise be due to an employee is not paid to them once they are under notice of dismissal. The claimant accepted that during the hearing. For the sake of completeness we accept counsel's note of evidence in this regard which corresponds to that of the Panel. The note states:

> *RD:* ***[A34]****. Here you say, "*I am also due large amounts of commission from the company …*" Then you say that, because of that, "*stealing company data would not have been in [your] personal interests …*" That's because you knew if you stole company data you could be dismissed, and then you wouldn't be paid any commission, isn't it?*
>
> *C: So yeah. I knew if I was dismissed I wouldn't be paid the commission. …"*
>
> *"RD: So you received your draft payslip, then you were dismissed, then your final payslip. This didn't include any commission because you'd been dismissed – you understood that didn't you?*
>
> *C: Yeah but only because I got fired. But the rule was draft payslip confirmation of what you're entitled to be paid. If I was properly fired then yes I'd lose those moneys."*

Law

83 We accept Mr Dennis' summary of the relevant law set out in his closing submissions as a fair summary of the relevant legal principles. Since that was not challenged by Ms Holland, then in the interests of proportionality, we have copied and pasted the relevant sections below.

Whistle-blowing

84 Sections 43B(1)(a) and (b) ERA 1996, provide that:

> *(1) In this Part 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 one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*

85 "Likely" means more probable than not. In ***Kraus v Penna plc*** **[2004] IRLR 260**, Cox J held that:

> *24. We accept Mr Nawbatt's submission that we should interpret the word 'likely' in s.43B(1)(b) (and indeed it appears throughout sub paragraphs (a) to (f) in that subsection) consistently with the interpretation it has previously received in the cases referred to and as requiring more than a possibility, or a risk, that an employer (or 'other person') might fail to comply with a relevant legal obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable*

than not that the employer will fail to comply with the relevant legal obligation. Mr Kraus's advice to Mr Bolton that Syltone 'could' breach employment legislation cannot in our judgment be a qualifying disclosure within s.43B(1)(b). … (Emphasis added, here and below)[1]

86 The facts of that case were in some respects similar to this one. Cox J summarised the disclosures on which the claimant relied, as follows:

> *20. The pleaded disclosure … was that he:*
>
> > *'advised Mr Bolton that the company could breach employment legislation and would be vulnerable to claims for unfair dismissal in pursuing this course of action. Mr Bolton's reaction was to quickly move the discussion on and I made a mental note to discuss this matter with him in private at a later date.'*
>
> *This disclosure was made in the context of the first meeting with managers, when Mr Kraus alleged that he was:*
>
> > *'faced with a proposal which was contrary to my understanding of the three-stage statutory test of redundancy, ie Mr Bolton (of Syltone plc) was proposing to dismiss employees beyond the efficiencies delivered by the restructuring to achieve short-term financial targets and not mainly or wholly because of the cessation or diminution to carry out work of a particular kind in that location.'*
>
> *What was being referred to was therefore merely a proposed course of conduct, in its preliminary stages, on which Mr Kraus had been engaged specifically to advise.*

87 Applying the test of more probable than not to those facts, Cox J held that:

> *21. Against this background Mr Kraus has to show that he disclosed information which, at the time he disclosed it, he reasonably believed tended to show that Mr Bolton was likely to fail to comply with a legal obligation to which he was subject. … on his own account the information disclosed to Mr Bolton was only that the company 'could' breach employment legislation and would be vulnerable to claims for unfair dismissal. At its highest, therefore, Mr Kraus's belief was limited at this early stage to the possibility or the risk of a breach of employment legislation, depending on what eventually took place. In our judgment this did not meet the statutory test of 'likely to fail to comply'. On his own account, Mr Kraus's case was that, after Mr Bolton moved the discussion on, he 'made a mental note to discuss this matter with him in private at a later date.' We bear in mind too that, as Mr Kraus would know, consultation on the reorganisation/redundancy programme would have to take place, which could affect the numbers of employees to be made redundant. As the tribunal recognised, in paragraph 8, there may have been sufficient volunteers for redundancy so as to avoid the need for, or reduce considerably, any compulsory redundancies. In our view, therefore, the tribunal did not err in finding, on the accepted facts, that the information disclosed could not be said to tend to show that Syltone were likely to fail to comply with its legal obligations. … Mr Kraus did not*

[1] This part of the judgment survives, and was endorsed by, the Court of Appeal's judgment in ***Babula v Waltham Forest College*** **[2007] ICR 1026** at [72]-[84].

himself believe that the information he disclosed to Mr Bolton tended to show that a failure to comply with a legal obligation was 'likely', in the sense of 'probable' or 'more probable than not'.

88 S. 47B ERA 1996 provides that:

> (*1) 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.*
>
> *(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—*
>
> > *(a) by another worker of W's employer in the course of that other worker's employment, or*
> >
> > *(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.*
>
> *(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.*

89 "Detriment" is defined as follows:

> *34. … As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522 g, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.*
>
> *35. But once this requirement is satisfied, the only other limitation that can be read into the word is that … one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment" … But … it is not necessary to demonstrate some physical or economic consequence.*
>
> *(**Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] I.C.R. 337** per Lord Hope)*

90 The courts have also recognised that there is a distinction between the disclosure of information, and the manner or way in which information is disclosed. In ***Panayiotou v Kernaghan*** **[2014] IRLR 500**, Lewis J held that:

> *49. First, as a matter of statutory construction, section 47B of ERA does not prohibit the drawing of a distinction between the making of protected disclosures and the manner or way in which an employee goes about the process of dealing with protected disclosures. … There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or*

abusive way in which the employee conveyed the information was considered to be unacceptable. …

91 S. 103A ERA 1996 provides that:

An employee who is dismissed shall be regarded for the purposes of this Part 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.

92 This imports a different test to that for unlawful act detriment: the Tribunal must be satisfied that any protected disclosure was the sole or principal reason for the claimant's dismissal: see ***Co-operative Group Ltd v Baddeley*** **[2014] EWCA Civ 658** at [41]-[44]. The reason for dismissal is the *"set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee"* (ibid at [41], citing ***Abernethy v Mott Hay & Anderson*** **[1974] ICR 323**).

Unauthorised deduction of wages

93 S. 13 ERA 1996 provides that:

(*1) An employer shall not make a deduction from wages of a worker employed by him unless—*

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

…

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

Conclusions

94 The underlined passages below reflect the matters set out in the list of issues. Our conclusions then follow.

Protected disclosures

95 Were the following statements made? Based on our findings of fact, which the respondent agrees in this respect, we conclude that the claimant made the following statements to the respondent during a telephone call on 24 March 2020 at 11am:

a. That he was *"just looking out for the business and did not want it to do anything illegal"* (when asked about why he had held a WhatsApp call with colleagues to discuss Ms Basiratpour's WhatsApp communication);

b. He read sections of Ms Basiratpour's WhatsApp communication regarding the requirement to work whilst on furlough, then said he had researched the furlough rules for the Coronavirus Job Retention Scheme on the Gov.uk website, and was certain that to follow the proposed plan would be a breach of the respondent's legal obligations; and/or

c. That he was worried that it would be *"literally fraud"* to keep working during furlough leave.

96 In respect of each such statement:

96.1 Did this constitute a disclosure of information? We conclude that, taken as a whole, the above statements amount to more than an allegation. What the claimant was suggesting to the respondent was a simple matter – namely, employees on furlough could not carry out work for their employer and to ask them to do so would be a potential fraud.

96.2 Did C believe that any such information tended to show: (i) that a criminal offence had been committed, was being committed or was likely to be committed and/or (ii) that R had failed, was failing or was likely to fail to comply with any legal obligation? We conclude that the claimant did believe that the respondent was likely to commit a fraud. To that extent, the case is distinguishable from Kraus, in which the claimant knew that what was being suggested was only a proposal at that stage. We conclude that in the claimant's own mind, he believed that it was more probable than not that Ms Basiratpour was going to plough on regardless.

96.3 If so, was that belief reasonable? We conclude that the claimant's belief in that respect was unreasonable. Ms Basiratpour had made it clear to the claimant during the call that asking employees to work on furlough was only a proposal and that she was waiting to hear from the accountants. The reference to people working as normal on 24 March was understandable as Ms Basiratpour was running a business, in highly difficult and unusual circumstances. However, such statements did not mean that Ms Basiratpour was going to plough on and ask employees to continue working if they were subsequently placed on furlough, regardless of the advice from the accountants. The claimant had told Ms Basiratpour that she should not have communicated before she knew the answer to all of the questions raised by her WhatsApp message of 23 March. So the claimant knew Ms Basiratpour was waiting for an answer. In such circumstances, it was not reasonable for the claimant to believe, as he did, that Ms Basiratpour was going to act unlawfully. His belief in that regard was not a reasonable one.

96.4 Did C believe that any such disclosure was made in the public interest? We conclude that the claimant believed that not defrauding the government would be in the public interest.

96.5 If so, was that belief reasonable? We conclude that such a belief was reasonable.

97 If so, was any such disclosure made to C's employer, the respondent? We conclude that it was. The disclosure was made to Ms Basiratpour, the joint owner of the business and the claimant's line manager.

98 Since the claimant has failed in relation to sub-issue 3 above (see 96.3), we conclude that the claimant did not make a protected disclosure. His protected disclosure claims therefore necessarily fail. In any event, for the reasons which follow, even if we had concluded that he had made a protected disclosure, the detriment and dismissal claims would still not have succeeded.

Whistleblowing detriment

99 If C made one or more protected disclosures, was he subjected to any detriment by any act, or any deliberate failure to act, done by R on the ground that he made any such disclosure? C relies on the following alleged detriments:

99.1 On 24 March 2020 at 11am, Ms Basiratpour shouted down the phone at him; in so far as Ms Basiratpour raised her voice during this call, this is made out. We will assume, for the purposes of this allegation, that it could potentially amount to a detriment. Even if it did however, we conclude that Ms Basiratpour raised her voice because the claimant told her that she had acted unprofessionally in sending a WhatsApp message instead of an email, before she knew all of the facts; and to cut off the claimant from his repeated suggestion that she was asking him to do something illegal. Her raised voice was not because of the alleged protected disclosure. The claimant's comments were ill-advised, especially in the extraordinary circumstances existing at that time.

99.2 On 24 March 2020 at 11:32, Ms Basiratpour and Mr Jayaratne Jayaratne changed C's password so as to exclude him from R's computer system; we have found that this happened as a matter of fact and we conclude that it was a potential detriment. However, Mr Jayaratne was acting on Ms Basiratpour's instructions and the reason for those instructions was because it had been discovered that the claimant had sent a screen shot of highly confidential information to his personal email address. It had nothing to do with the content of the call at 11 am that day.

99.3 On 25 March 2020 at 16:53, R required C to attend a disciplinary hearing on 27 March 2020 at 9:30; it is not in dispute that this happened. We conclude however that the reason was the same as set out in 99.2 above. It had nothing to do with the information disclosed during the phone call the day before.

99.4 R gave C inadequate time to prepare for the disciplinary hearing on 27 March 2020; we conclude that although the claimant was given a short time to prepare and this was potentially a detriment, again this was not because of the alleged protected disclosure. It was because Ms Basiratpour was concerned about the loss of highly confidential data; she wanted to urgently deal with the issue; she had been advised that it was okay to proceed at speed; and it appeared to her to be a straight-forward matter. On the basis of all of this, we conclude that this potential

detriment had nothing to do with the information disclosed during the phone call on 24 March 2020. Had this been an unfair dismissal claim, the timescales may have been more of an issue before us. Since such a claim is not before us however, it is not necessary to draw any firm conclusions as to whether or not the timescales imposed were reasonable in all the circumstances. The above conclusion as to the reason for the treatment effectively deals with the issue before us.

99.5 R did not allow C additional time to find a companion to bring to the disciplinary hearing and refused to postpone it for that purpose; as above, we conclude that this was because Ms Basiratpour had been (wrongly) advised that the claimant did not have the right to bring a TU companion. Ms Basiratpour conceded that this advice was wrong when it was put to her during the hearing. She also accepted that this right does not depend on whether the trade union representative works for a trade union that is recognised by the employer.

99.6 On 28 March 2020, R paid C less than the sums due to him for commission already earned as shown on his payslip of 16 March 2020. We conclude that the reason for the failure to pay the commission was because of the industry practice to that effect, which the claimant accepted was industry practice. Again, this was not because of the alleged protected disclosure. The claimant was dismissed the day before his wages were contractually due on 28 March. In those circumstances, the commission was not payable and was lawfully withheld.

Whistleblowing dismissal

100 If C made one or more protected disclosures, was the sole or principal reason for his dismissal that he made any such disclosure? We conclude that the dismissal had nothing to do with the alleged protected disclosure. Ms Basiratpour decided to dismiss the claimant because she believed that he had taken highly confidential and valuable data from the company, for his own use. As noted above, the claimant's explanation for the sending of the data to his personal email address has changed over time. It is understandable that Ms Basiratpour was not convinced by the explanation given by the claimant. It was her reasonable belief that a breach of confidentiality had occurred and that was the reason for her decision to dismiss the claimant. Whilst the conversation on 24 March had annoyed Ms Basiratpour, we conclude that she would not have dismissed him for that reason, particularly given the effort that she had put into training and supporting him in relation to her business. The claimant was an effective employee and we find Ms Basiratpour did not and would not have dismissed him because of his comments on 24 March.

Breach of contract – notice pay

101 Did C commit a repudiatory breach of his contract of employment such that R was entitled to dismiss him without notice? This is how the issue was put, but we have concluded that we do not need to determine whether or not the

claimant did in fact commit a repudiatory breach of his contract of employment. This is because we conclude that the claimant was in breach of clause 20, taken as a whole and that in such circumstances he was not entitled to notice pay.

102 Clause 20.1. and 20.1.5 state:

> *20.1 The Company shall have the right to terminate the Employment at any time without notice, compensation or payment in lieu of notice and without payment in lieu of untaken holiday entitlement in excess of statutory leave entitlement in the event of gross misconduct by the Employee or otherwise meriting summary dismissal including but without prejudice to the generality of the foregoing: ….*
>
> > *20.1.5 being guilty of any misconduct that is in the reasonable opinion of the Company serious misconduct or of any material breach or non-observance of the provisions of this Contract*. (our emphasis)

103 Clause 20.2 states:

> *The Employee shall have no claim against the Company in respect of the termination of his Employment by the Company pursuant to this clause 20.*

104 For the reasons set out in relation to the dismissal claim above, we conclude that Ms Basiratpour formed a reasonable opinion that the claimant was guilty of serious misconduct; namely, the sending of a list of highly valuable and confidential information to his personal email address, for his own potential gain. In those circumstances, taking those clauses as a whole, the respondent was entitled to summarily dismiss the claimant. Clause 20.2 disentitled the claimant, in those circumstances, from bringing a breach of contract claim against the company in respect of the termination of his employment without notice, regardless of whether his conduct also amounted to a repudiatory breach. In those circumstances it is not necessary to determine whether in the circumstances such a breach was actually committed.

Unauthorised deductions from wages

105 Was any commission properly payable by R to C on 28 March 2020? C says he was entitled to £9,200 (gross). R says he was not, because his employment terminated on 27 March 2020.

106 We refer to our finding of fact above in relation to the relevant industry practice in relation to commission outstanding at the time that notice of termination was given. Since the claimant was dismissed the day before his salary was due, we conclude that he is not contractually entitled to be paid the above commission.

Costs

107 The respondent indicated at the conclusion of the hearing that it intended to make an application for costs. Case management directions have been made in relation to that application, which with the parties agreement, will be dealt with on the papers. A date has been set aside, 27 August 2021, for the tribunal

panel to consider the application and response and reach a decision on that application.

Employment Judge A James
London Central Region

Dated 29 June 2021

Sent to the parties on:

.30TH June 2021

For the Tribunals Office

ANNEX A – AGREED LIST OF ISSUES

Protected disclosure

1 Did C make one or more of the following statements to Natalie Basiratpour during a telephone call on 24 March 2020 at 11am:

1.1 That he was *"just looking out for the business and did not want it to do anything illegal"* (when asked about why he had held a WhatsApp call with colleagues to discuss Ms Basiratpour's WhatsApp communication);

1.2 He read sections of Ms Basiratpour's WhatsApp communication regarding the requirement to work whilst on furlough, then said he had researched the furlough rules for the Coronavirus Job Retention Scheme on the Gov.uk website, and was certain that to follow the proposed plan would be a breach of R's legal obligations; and/or

1.3 That he was worried that it would be *"literally fraud"* to keep working during furlough leave.

2 If so, in respect of each such statement:

2.1 Did this constitute a disclosure of information?

2.2 Did C believe that any such information tended to show: (i) that a criminal offence had been committed, was being committed or was likely to be committed and/or (ii) that R had failed, was failing or was likely to fail to comply with any legal obligation?

2.3 If so, was that belief reasonable?

2.4 Did C believe that any such disclosure was made in the public interest?

2.5 If so, was that belief reasonable?

3 If so, was any such disclosure made to C's employer, R?

Whistleblowing detriment

4 If C made one or more protected disclosures, was he subjected to any detriment by any act, or any deliberate failure to act, done by R on the ground that he made any such disclosure? C relies on the following alleged detriments:

4.1 On 24 March 2020 at 11am, Ms Basiratpour shouted down the phone at him;

4.2 On 24 March 2020 at 11:32, Ms Basiratpour and Mr Jayaratne changed C's password so as to exclude him from R's computer system;

4.3 On 25 March 2020 at 16:53, R required C to attend a disciplinary hearing on 27 March 2020 at 9:30;

4.4 R gave C inadequate time to prepare for the disciplinary hearing on 27 March 2020;

4.5 R did not allow C additional time to find a companion to bring to the disciplinary hearing and refused to postpone it for that purpose;

4.6 On 28 March 2020, R paid C less than the sums due to him for commission already earned as shown on his payslip of 16 March 2020.

Whistleblowing dismissal

5 If C made one or more protected disclosures, was the sole or principal reason for his dismissal that he made any such disclosure?

Remedy

6 If C was dismissed or subjected to any detriment for making a protected disclosure:

6.1 Would it be just and equitable for him to be awarded any compensation?

6.2 Should any compensation be reduced for contributory fault?

6.3 Should any compensation be reduced to reflect a chance he would have been dismissed or subjected to that detriment even if he had not made any such disclosure?

Breach of contract – notice pay

7 Did C commit a repudiatory breach of his contract of employment such that R was entitled to dismiss him without notice?

8 If not, to how much notice was C entitled?

Unauthorised deductions from wages

9 Was any commission properly payable by R to C on 28 March 2020? C says he was entitled to £9,200 (gross). R says he was not, because his employment terminated on 27 March 2020.