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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107927/2020 (V)

**Hearing Held via Cloud Video Platform (CVP) on 31 May, 1, 2 and 3 June 2021
(Members' Meeting on 4 June 2021)**

Employment Judge: M Sutherland

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Member: I Ashraf

W Muir

Mr Kacper Kryczyk

**Claimant
In person**

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Nickam Ltd

**Respondent
Represented by:
Mr Maham, Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that –

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1. The Claimant was not dismissed by reason of a protected disclosure and his claim for unfair dismissal is dismissed.
2. There was an unlawful deduction from the Claimant's wages in sum of £40 which sum has been repaid to the Claimant.

REASONS

1. The Claimant lodged a complaint for automatically unfair dismissal by reason of protected disclosure and also for unlawful deduction from wages. A final hearing was arranged for today to determine all issues including remedy.
5 During the hearing the Claimant clarified he was not making a claim for a failure to provide an itemised pay statement.
2. The Claimant appeared on his own behalf. The Respondent was represented by its Manager/ Director, Macih Maham.
3. The Claimant gave evidence on his own behalf and called Zbigniew Figlarz
10 (Kitchen porter/ assistant) and Paweł Cebula, Head Chef as witnesses. The Respondent called Macih Maham (Manager/ Director) and his wife Catherine Maham as witnesses.
4. The Claimant had proposed to call Anna Clinch but following discussion accepted that she was not able to give relevant evidence. The Respondent
15 had proposed to call Rouein Pirlou but following discussion accepted that he was not able to give relevant evidence.
5. In his claim, and as clarified at a prior preliminary hearing, the Claimant relied upon three disclosures: first, on 30 August 2020 informing his manager of broken kitchen ventilation (and consequent high temperatures) at a staff
20 meeting; second, on 8 September 2020 informing his manager of out of date frozen prawns; and third, on 2 October 2020 advising his manager that the Respondent was fraudulently claiming furlough when he was working. Following receipt of the Respondent's bundle of documents and CCTV footage, and after discussion at the start of the final hearing, the Claimant
25 was permitted to amend the disclosures relied upon as follows: the date of the first disclosure was changed to 31 August; and the date of the third disclosure was changed to 28 September 2020.
6. The Claimant asserts that the reason he was dismissed was because he made protected disclosures. In his claim, and as subsequently clarified, he
30 asserts that this can be inferred because the employees who were retained were unable to prepare the menus, because another chef with significantly less service was retained, and because there was a behaviour change after the disclosures.

7. During the course of the hearing the Respondent accepted that there was no written clause permitting a deduction from wages and accordingly accepted that there had been an unlawful deduction from wages in sum of £40. The Respondent made and the Claimant received an immediate transfer of that sum in satisfaction of that debt.
8. The Claimant's first language is Polish. In light of the services provide by the interpreter we are confident that the Claimant fully understood the questions being put to him and that we fully understood his responses. We do not consider that his evidence was affected by any difficulties with interpretation.
9. Both parties prepared a bundle of documents. The Respondent also relied upon CCTV footage which not usually retained and was only available from 18 September 2020 onwards.
10. Both parties gave brief oral submissions.
11. At the end of the hearing both the Claimant and Mr Maham were thanked for their efforts in preparation for today's hearing in furtherance of the overriding objective.
12. The following initials are used by way of abbreviation in the following findings of fact.

Initials	Name	Job Title
CM	Catherine Maham	Manager's wife
K	Karol [Surname]	Commis-Chef /Kitchen Assistant
MM	Macih Maham	Manager/ Director
PC	Paweł Cebula	Head-Chef
RP	Rouein Pirlou	Ex-Manager
ZF	Zbigniew Figlarz	Kitchen Porter/ Assistant

20 **List of Issues**

13. The issues to be determined were as follows –

Public interest disclosure dismissal section 103A Employment Rights Act ('ERA')1996

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- a. Has the Claimant made a disclosure of information to his employer?
 - b. Did the Claimant reasonably believe the disclosure was in the public interest and tended to show relevant wrongdoing (e.g. a criminal offence, a breach of a legal obligation, miscarriage of justice, health and safety risk, environmental risk)?
 - c. Was the protected disclosure made in good faith?
 - d. Was the sole reason or principal reason for dismissal of the Claimant that he had made a protected disclosure?

Unlawful deduction from wages section 13 ERA 1996

- 10
- a. What was the total amount of wages properly payable to the Claimant on each occasion?
 - b. What was the total amount of wages paid to the Claimant on each occasion?
 - c. Were any of the deductions of wages excepted deductions (Section 14)?
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Findings of Fact

Prior Employment

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14. Before starting work with the Respondent, the Claimant had previously worked for MM (Manager/ Director of the Respondent) in a pub from July 2017 to April 2019. He left that job when he accepted a job with Miros Cantina Mexicana Limited (MCML).

Employment with MCML

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15. The Claimant commenced employment with MCML on 13 May 2019. At that time MCML operated the restaurant Miros Cantina Mexicana on Rose Street, Edinburgh which was managed by RR (who was MM's son).
16. MCML employed four staff in the kitchen of the Mexican restaurant and four front of house staff in the restaurant. In the kitchen, MCML employed a Head-

Chef (PC), a Sous-Chef (the Claimant), a Commis-Chef /Kitchen Assistant (K) and a Kitchen Porter/ Assistant (ZF).

17. The Claimant worked about 34 hours a week at a rate of £8.75 an hour. He was paid weekly in arrears.

5 18. PC in his capacity as Head Chef would raise issues on behalf of the kitchen staff. The Claimant would also raise issues in his capacity as Sous Chef. The Head Chef and the Claimant were in regular discussion with each other.

19. When the restaurant closed, all staff including the Claimant were placed on furlough from 27 March 2020. When the restaurant re-opened in August 2020
10 the staff remained on partial furlough.

Transfer to the Respondent

20. On 28 August 2020 the restaurant was acquired by the Respondent and the Claimant's employment immediately transferred to the Respondent. The restaurant was then managed by MM a Director of the Respondent.

15 21. The staff and MM, Manager communicated via a Whatsapp rota. The messages sent between MM, Manager/Director and the staff (including the Claimant) were polite and friendly.

22. There was only one staff meeting after the transfer and before the termination of the Claimant's employment. That meeting took place on 31 August 2020.

20 *Ventilation issues*

23. At the staff meeting on 31 August 2020 the Head Chef raised an issue on behalf of all the staff that the ventilation in the kitchen was very loud because it was not operating properly and needed to be turned off making the kitchen very hot.

25 *Out of date food issue*

24. On 8 September 2020 the Respondent had an unannounced visit from an environmental health officer. A customer who had eaten prawns in the restaurant had become unwell with suspected food poisoning. The environmental officer discussed food preparation and storage procedures with the Claimant and checked the restaurant's fridges and freezers. As part
30 of those procedures the chefs would check whether food was still in-date,

dispose of any food which was out-of-date, and if so, would make an entry in the waste food book. Following her visit, the environmental officer was entirely satisfied that any food poisoning had not been caused by the restaurant. CM (MM's wife) sent the staff a WhatsApp message noting what a great job the Claimant had done. MM did not instruct the Claimant not to dispose of any out of date prawns.

Furlough issues

25. In early September MM, Manager/ Director asked the staff to provide details of their hours worked from 28 August 2020 to 13 September 2020. MM found the Claimant's reply confusing. MM asked the Claimant again and he clarified 86 hours in total; 18 hours on furlough.

26. The Claimant worked part time (10 hours a week) at his own requested from about mid-September for a few weeks on a temporary basis because he wanted time to look for work elsewhere.

27. On 18 September 2020 there was an informal meeting between the Claimant and MM, Manager/ Director. The Claimant advised MM that he had suffered an underpayment of wages. He had not yet received his payslip but based upon a rough calculation the amount he had received into his account was less than he had expected. Upon checking MM agreed that he had not been paid for 18 hours and that he should take the missing money from the till which he did on 18 September 2020.

28. MM in discussion with his accountant identified that the Claimant had been paid 34 hours on furlough in week 24 when he had in fact worked those hours. That error was corrected in week 26.

29. On 28 September 2020 the Claimant raised with MM that he wanted his pay slip corrected so that it showed the missing 18 hours he had worked (and for which he had been paid in cash from the till). He advised this was important to him because future furlough payments would be calculated with reference to these earnings.

Redundancy

30. As a condition of the lockdown the Respondent was required to reduce the number of tables in the restaurant and to restrict the menu. This resulted in a

decrease in customer numbers and a decrease in profits. The Manager determined that it required to reduce staff costs to have any chance of financial survival during the continuing lockdown. The Claimant knew that the restaurant would have to close for at least 2 weeks and possibly for as long as 6 months.

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31. At the informal meeting on 18 September 2020 MM, Manager/ Director advised the Claimant that the company may have to make some staff redundant. The Claimant was never advised of this in writing. On 19 September 2020 the Head Chef was also advised of the risk of redundancy.

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32. The Claimant was absent on holiday from 21 September to 27 September 2020. The Claimant had taken more holiday than he had accrued and was not paid for that week.

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33. The Manager/ Director, MM decided that he needed to reduce the kitchen staff from four to two and the front of house staff from four to two. In reaching a decision as to which staff to select for redundancy he relied upon their length of service and their financial cost to the business. As regards the kitchen staff, he retained K, Commis Chef who had been employed since 2016 and ZF, Kitchen Porter who had been employed since 2017. PC, Head Chef had also been employed since 2017 but he represented a greater financial cost because his wages were higher, and he was selected on that basis. The Claimant did not have 2 years service and his wages were higher.

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34. The kitchen staff who were retained (a Commis chef and a Kitchen Porter) were unable to prepare the full menus for complete covers. K, Commis chef, who was retained, worked part-time. However, K was the most experienced in preparing Mexican food, he knew the menus and taught the menus to new chefs. Furthermore the restaurant was going to be either closed because of the lockdown or operating with a reduced number of covers and on a restricted menu because of the lockdown. No other chef was retained. There was a recently rostered casual worker who was given no further work following the redundancies.

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35. On 7 October 2020 the staff were advised not to order any more fresh produce. The staff were aware that the restaurant was to close for around two

weeks, and possibly much longer. ZB, Kitchen Porter took perishable food with the permission of the manager.

- 5 36. On 10 October 2020 MM wrote to the Claimant on behalf of the Respondent advising him that in light of the covid lockdown he had no option but to make him redundant; that the Respondent had not been able to identify suitable alternative work; that his employment would terminate on 17 October 2020; and he was thank for his work and advised he would not hesitate to re-employ him when/ if any opportunity arises.
- 10 37. On 19 October 2020 the Claimant submitted a written grievance stating that at the meeting on 18 September 2020 he raised concern about an unlawful deduction from wages and a breach of the furlough scheme; he expressed concern that he was selected because he expressed these concerns; that he was considering raising a claim for automatically unfair dismissal; and that he was seeking compensation.
- 15 38. On 21 October 2020 MM replied on behalf of the Respondent. He advised that the following points were taken into consideration before he was chosen to be made redundant: firstly he looked at length of service advising that K, Commis Chef was employed in 2016 and ZF, Kitchen Porter was employed in 2017 whilst the Claimant was employed in 2019; that on 9 October 2019 he had taken food without permission; that he had not advised his hours and his accountant had paid furlough in error which he corrected once he had his hours; that it is not easy making a decision to make a member of staff redundant but he had to make a decision on the evidence he had; that he hoped his health improves and if a vacancy comes up he will discuss it with him.
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- 30 39. On 22 October 2020 MM made a deduction from the Claimant's final wages in sum of £40 in respect of food he believed that the Claimant had removed. The staff had been advised to take food which would not keep during the restaurant closure. The Claimant advised he had not taken the food and believed that he was falsely accusing him because he had raised a grievance. In any event, there was nothing in writing permitting the Respondent to deduct wages from the Claimant.

40. The restaurant ceased to trade in the period 9 October 2020 to 17 May 2021 (except for the period of 1 week starting 24 October 2020). Two new chefs were hired in May 2021. The Claimant was not approached for work.

Losses

5 41. The Claimant made a number of applications for work each week. The Claimant received Job Seeker's allowance of £297.40 each week from 2 December 2020. He secured initially two week's temporary work and ultimately permanent work in mid May 2021.

Observations on the evidence

10 42. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event, etc was more likely than not, then the Tribunal is satisfied that the event did occur.

Witness credibility and reliability

15 43. There were material inconsistencies within the Claimant's testimony and with the contemporaneous documentary and other evidence as noted below. We therefore did not find the Claimant to a wholly credible and reliable witness.

44. We considered ZB, Kitchen Porter to be a credible and reliable witness. He gave his very limited evidence without hesitation.

20 45. We did not consider PC, Head Chef to be a wholly credible witness. There were some inconsistencies with his testimony as noted below.

46. There were some inconsistencies within Macih Maham's testimony as noted below. We therefore did not find Macih Maham to be a wholly credible and reliable witness.

25 47. We considered Catherine Maham to be a wholly credible and reliable witness. She gave her limited evidence without material hesitation which evidence was wholly consistent with the contemporaneous documentary evidence.

Ventilation issue

48. In his grievance the Claimant did not state that that it was he who raised the issue about the broken ventilation but instead referred to "those who have

raised legitimate concerns". In his claim the Claimant stated "we have repeatedly made oral and written complaints." We are mindful that English is not his first language, but we note he used the words "I have" in relation to raising other issues, which suggests he understood the difference. In evidence the Claimant stated, "we always spoke as a team". It was therefore considered more likely than not that it was the Head Chef, PC and not the Claimant who complained about the issue of the broken ventilation on behalf of the staff at the staff meeting.

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49. There were three fans in the kitchen: an extractor above the cooker, an auxiliary fan, and a recirculation fan. It was accepted by the Manager, MM that the fan was too loud. Drawing on his experience as an engineer, he dismantled the fan, applied white grease and reconstructed the fan.

Out of date food issue

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50. On 8 September 2020 the Respondent had an unannounced visit from an environmental health officer. A customer who had eaten prawns in the restaurant had become unwell with suspected food poisoning. The environmental officer discussed food preparation and storage procedures with the Claimant and the environmental office checked the restaurant's fridges and freezers. As part of those procedures the chefs check whether food is still in-date, dispose of any food which is out-of-date, and if so make an entry in the stock book. Following her visit the environmental officer was entirely satisfied that any food poisoning had not been caused by the restaurant. CM (MM's wife) sent the staff a WhatsApp message noting what a great job the Claimant had done. The Claimant asserts that he then raised with MM in person that there were boxes of out of date prawns in the freezer and that he was instructed by MM, who was sitting in the restaurant with his wife on 8 September 2020, not to dispose of the prawns and that there would be consequences if he did. MM categorically denied this explaining that it was contrary to their written protocols and that he was not in the restaurant that day. His wife gave clear and cogent evidence that MM was not in the restaurant that day. PC, Head Chef initially advised the MM had issued that instruction but then subsequently admitted that he did not witness it because

it was his day off. In any event, any such instruction would have been entirely contrary to the existing procedures known to MM and adopted by the chefs. They had just had a visit from Environmental Health who had checked the freezers and found no issues. Given their pre-existing procedures and that recent visit from Environmental Health, it made no sense for there to be out of date prawns in the freezer and it would have made absolutely no sense in the circumstances for MM to have issued that instruction. It is therefore considered that MM did not issue that instruction.

Furlough issue

51. At the informal meeting on 18 September 2020 between the Claimant and MM, the Claimant advised MM that he had suffered an underpayment of wages. In his grievance letter of 19 October 2020, the Claimant states that at that meeting he also expressed concern that the pay slip stated furlough, when in fact he had been at work for those hours, and accordingly there had been a breach of furlough scheme. The Claimant also gave evidence to this effect. However, the Claimant by his own testimony did not in fact receive his payslip until after that meeting. Accordingly, the Claimant could not have expressed a concern about his payslip and the furlough issue at that meeting.

52. In his claim the Claimant asserts that on 2 October 2020 there was an informal meeting between MM (Manager), the Head Chef and the Claimant. Following receipt of the bundle of documents from the Respondent and CCTV footage, the Claimant amended that to a meeting with MM on his own on 28 September 2020. There had been only one meeting with MM at which both chefs had been present which was the staff meeting on 31 August 2020. The error regarding the date was not considered to be of material consequence but the assertion that the Head Chef was in attendance appeared to be not just wrong but false.

53. The Claimant and the Head Chef were informally advised of the risk of redundancy around mid-September. The Claimant was advised at the informal meeting on 18 September 2020 and the Head Chef on 19 September. From about mid-September the Claimant began to look for work elsewhere. The Claimant went on holiday on 21 to 27 September. The

Claimant discussed matters with the Head Chef and together they decided to confront their employer.

54. The Claimant planned with the Head Chef to create a covert record of the meeting with MM on 28 September which he intended to rely on as evidence.

5 Prior to attending the meeting, he dialled the Head Chef and put the phone in his pocket. The Claimant asserts that at that meeting he confronted MM with the furlough fraud, threatening to report him to MHRC. When asked in evidence whether or not he had threatened to contact HMRC at that meeting as plead, the Claimant was evasive in reply saying, "lets say so" and "more or less". MM asserted in evidence that the Claimant was complaining that his
10 payslip didn't show the hours he actually worked.

55. PC, Head Chef gave evidence that the issue they wanted to raise was that their wages were not adding up; that there was a discrepancy between the hours he had worked, and the hours shown on the pay slip. Having covertly
15 listed in on the phone call, he gave evidence that on the meeting of 28 September 2020 he heard the Claimant raising with MM that he shouldn't have used a casual chef when there weren't enough hours for the existing chefs. He also heard the Claimant complaining that his payslip should show the hours he actually worked. He said he heard the Claimant state he would
20 report the Respondent to HMRC for not paying him for the missing hours. He did not give any evidence that the Claimant raised the issue of a fraud on the furlough scheme.

56. Having regard to the above, it is considered more likely than not that the Claimant did not raise the issue with the alleged furlough fraud and was
25 instead raising the issue of the error on his payslip regarding the missing hours.

Change in behaviour

57. The Claimant asserts that there was a change in MM, Manager/Directors behaviour after the disclosures.

30 58. The Claimant had previously worked for MM from July 2017 to April 2019. He then accepted a job with MM's son at the restaurant. The Respondent took over the restaurant on 28 August 2020. The messages sent between MM and the Claimant were polite and friendly. There was however little evidence

as to the nature of their relationship in person. The disclosures were said to have been made on 31 August, 2 October and 28 September. The Claimant gave evidence that there was a change in MM's behaviour at the meeting on 28 September and that this could be seen from the CCTV footage.

5 59. The restaurant has a CCTV camera which records images but not sound. The CCTV footage shows the meeting of 28 September 2020. It did not show MM gesticulating wildly contrary to the Claimant's assertion although it did show MM moving his arms about. It showed MM holding a piece of paper. It showed MM moving towards and standing close to the Claimant. It showed the
10 Claimant moving away. The CCTV footage appeared to show a degree of agitation on the part of MM.

60. The Claimant gave evidence that he had worked with MM before and that such behaviour was in fact not out of character.

15 61. In the circumstances it is not considered that there was a change in MM's behaviour after the alleged disclosures.

Selection for redundancy

62. The Claimant did not dispute that there was a redundancy situation. His issue was with the reason why he was selected as opposed to another employee.

20 63. The Claimant initially denied that the risk of redundancy had been raised with him. He then subsequently admitted that the risk of redundancy had been raised with him but that he had not been formally warned that he was at risk of redundancy. We considered that the Claimant had been warned of the risk of redundancy.

25 64. PC, Head Chef gave evidence he was not advised of the risk of redundancy prior to receiving the email of 10 October. The Claimant had been advised of the risk of redundancy. The Head Chef and the Claimant were in regular discussion with each other. Staff knew of the lockdown situation and the effect on the Restaurant. The Head Chef was aware the Restaurant was closing. It is considered more likely than not that the Head Chef was informally advised
30 of the risk of redundancy. PC, Head Chef believed he had been selected because he had worked with MM before and it was revenge for him having taken other chefs with him when he left that previous business. He did not

assert that MM had selected him because he would raise issues on behalf of the kitchen staff in his capacity as Head Chef.

5 65. The Manager/ Director, MM decided that he needed to reduce the kitchen staff from four to two and the front of house staff from four to two. As regards
the kitchen he retained K, Commis Chef who had been employed since 2016
and ZF, Kitchen Porter who had been employed since 2017. PC, Head Chef
had also been employed since 2017 but he represented a greater financial
cost because his wages were higher, and he was selected on that basis. The
10 Claimant did not have 2 years service. MM advised in evidence that he relied
primarily on staff length of service. Although he referred to the removal of the
food in his reply to grievance letter MM stated in evidence, he would have
made him redundant even if he had not removed the food. In respect of the
Head Chef and the Commis Chef both of whom had similar service he
considered the difference in their wages. It is considered more likely than not
15 that in reach a decision as to which staff to select for redundancy MM relied
on length of service and their financial cost to the business and not primarily
on length of service as stated by him.

20 66. In his grievance letter the Claimant expressed concern that he had been
selected for redundancy when he had chosen to keep on the newly recruited
chef. The Respondent did not keep on a newly recruited chef. The
Respondent had from 27 September until 9 October, utilised the services of
a casual chef who was forced to seek work elsewhere when the restaurant
closed. The Claimant was aware of this.

25 67. The Claimant was incredibly unhappy that he had been accused of removing
the food and in bringing these proceedings he wanted to teach MM a lesson.

The Law

Protected disclosure dismissal

30 68. Under Section 43A Employment Rights Act 1996 ('ERA') a protected
disclosure is a qualifying disclosure made by a worker ordinarily to his
employer (Section 43C) or to a prescribed person (Section 43F). The burden
of proving a protected disclosure rests upon the Claimant.

69. Under Section 43B ERA 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 relevant wrongdoing including failure to comply with any legal obligation and that the health and safety of any individual has been, is being or is likely to be endangered.

70. The disclosure must convey information or facts, and not merely amount to a statement of position or an allegation (*Cavendish Munro Professional Risks Management Ltd v Geduld* 2010 IRLR 38).

71. Under section 103A ERA an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

72. The burden of proving the reason or principal reason remains on the employer unless the claimant lacks the qualifying period of employment in which case the burden of proof lies on the employee (*Kuzel v Roche Products Ltd* [2008] IRLR 530, Court of Appeal)

Unlawful deduction from wages

73. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.

74. Under Section 13(3) ERA 1996 there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.

75. Under Section 14 ERA 1996, Section 13 does not apply where the purpose of the deduction is a reimbursement in respect of an overpayment of wages, or industrial action, etc.

Discussion and decision

Protected disclosure dismissal

5 76. The Claimant relied upon three alleged disclosures: first, on 31 August 2020
informing his manager MM of broken kitchen ventilation (and consequent high
temperatures) at a staff meeting; second, on 8 September 2020 informing his
manager of out of date frozen prawns; and third, on 28 September 2020
advising his manager that the Respondent was fraudulently claiming furlough
when he was working. It was the Head Chef and not the Claimant who
10 informed MM, Manger/ Director of broken kitchen ventilation and accordingly
the Claimant did not make a protected disclosure regarding the kitchen
ventilation on 31 August 2020. On 8 September 2020 the Claimant did not
advise MM, Manager/ Director about out of date frozen prawns and
accordingly he did not make a protected disclosure about this. On 28
15 September 2020 the Claimant did not advise MM, Manager/ Director that the
Respondent was fraudulently claiming furlough and accordingly he did not
make a protected disclosure about this.

20 77. The Claimant did not dispute that there was a redundancy situation and a
need to reduce the number of staff in the kitchen. His issue was with the
reason why he was selected as opposed to another employee. The Claimant
submitted that the sole or principal reason he was dismissed was that he
made protected disclosures. He submitted that this can be inferred because
the employees who were retained were unable to prepare the menus,
because another chef with significantly less service was retained, and
25 because there was a behaviour change after the disclosures. The Claimant
had the shortest length of service. He and the other highest paid chef were
selected. The restaurant was to be closed or operating on a restricted menu.
Another chef with significantly less service was not retained. There was no
change in behaviour towards him. The reason he was selected for
30 redundancy was because of his length of service and cost to the business.

78. The sole or principal reason for the Claimant's dismissal was not that he made protected disclosures and accordingly his complaint of automatically unfair dismissal is dismissed.

5 79. The Claimant sought compensation for losses arising in the period from his dismissal to mid May 2021. For the sake of completeness and contrary to the Respondent's submissions, we considered that the Claimant had taken all reasonable steps to mitigate his losses and it was not reasonable to expect him to retrain within a few months of being unable to find a job in his chosen career as a chef.

10 *Unlawful deduction from wages*

80. On 22 October 2020 MM made a deduction from the Claimant's final wages in sum of £40 in respect of food he believed that the Claimant had removed without permission. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the
15 deduction is required or authorised by statute, or by a provision in the worker's contract advised in writing, or by the worker's prior written consent, or an exception under Section 14 applied. There was no written permission to make the deduction and no exception applied. The deduction was therefore unlawful. That sum was subsequently repaid to the Claimant by the
20 Respondent and accordingly no order for payment is made.

25 Employment Judge: Michelle Sutherland
Date of Judgment: 15 June 2021
Entered in register: 21 June 2021
and copied to parties