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## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4106713/2020 (V)**

**Held by means of the Cloud Video Platform on 6 and 7 July 2021**

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**Employment Judge W A Meiklejohn**

**Mrs Lynette Barron**

**Claimant  
In person**

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**Lady Lucilla Noble t/a Eilean Iarmain Hotel**

**Respondent  
Represented by:  
Ms S Henderson,  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is that the claimant was not unfairly dismissed by the respondent and accordingly her claim of unfair dismissal does not succeed and is dismissed.

### **REASONS**

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1. This case came before me for a final hearing, conducted remotely by means of the Cloud Video Platform ("CVP"), to determine both liability and, if appropriate, remedy. The claimant appeared in person and Ms Henderson represented the respondent.

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#### **Nature of claim**

2. The claimant brought a complaint of unfair dismissal. The respondent admitted dismissal but denied unfairness. The respondent's position was that the claimant had been fairly dismissed by reason of redundancy.

5 **Procedural history**

3. A preliminary hearing (before Employment Judge R McPherson) took place on 17 March 2021. The principal outcome was a series of case management orders in terms of which the claimant was required to provide a schedule of loss, the respondent was allowed to respond to further particulars of the claim previously submitted by the claimant and the case was to be listed for a final hearing conducted by CVP.
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**Evidence**

4. The witnesses for the claimant were –
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- The claimant herself
  - Ms G MacLeod, a Housekeeper employed by the respondent
  - Ms A Rak, formerly a Housekeeper employed by the respondent
  - Ms S Gorman, formerly a seasonal General Assistant employed by the respondent
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5. The witnesses for the respondent were –
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- Mr G Wallace, Finance and Business Manager
  - Ms G Courtney, Bar Manager (and also Duty Manager)
  - Ms C Nicholson, Office Manager
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6. Mr Wallace is employed by the respondent to oversee the operation of (a) Fearann Eilean Iarmain, the estate upon which the Eilean Iarmain hotel

stands, (b) the hotel itself, (c) Ardvasar Ltd, a company which operates the Inn at Aird a'Bhasair, and (d) Praban an Linne Ltd, a company which produces and sells Gaelic gin and whisky. He is also referred to as the General Manager of the Eilean Iarmain Hotel. Ms Nicholson is employed as Office  
5 Manager within the estate office which, along with the adjoining shop, forms part of the complex of buildings at Eilean Iarmain.

7. The evidence in chief of each witness was contained in a written witness statement. These witness statements were taken as read in accordance with Rule 43 of the Employment Tribunal Rules of Procedure 2013. It had been  
10 agreed between the parties that the claimant should lead at the hearing.

8. I had a joint bundle of documents (which included the witness statements). I refer to this below by page number.

### **Findings in fact**

9. The respondent operates the Eilean Iarmain Hotel (and Fearann Eilean Iarmain) as a sole trader. She is not however involved in the day-to-day  
15 running of the business. That is left to Mr Wallace as detailed above. The hotel made a loss in 2015/16, a small profit in 2016/17 and 2017/18, and losses in 2018/19 and 2019/20. Ms Nicholson prepares monthly management accounts for the hotel but is not otherwise involved in the hotel business.

20 10. The claimant commenced employment at the hotel in April 2014 as Head Housekeeper. She was provided with a contract of employment (76-80) which was updated in 2018 (81-85). This contract provided (at clause 6 – Normal hours of work) as follows –

25 *“The business reserves the right to increase or decrease your minimum committed hours of work and/or vary your working pattern (including days, hours, weeks) on a temporary or permanent basis, as necessary to meet the operational requirements and/or trading patterns of the business. These changes will be discussed with you and you will be given reasonable notice of the change. You accept that any reduction in minimum agreed committed  
30 hours in accordance with this clause may result in a reduction of earnings.”*

11. The claimant's background included working in the licensed trade in London. She knew how to change a barrel of beer and clean lines and how a bar cellar worked. Her husband had worked as Bar Manager at the hotel in 2017/18 and she had helped out in the bar on a couple of occasions. For a period  
5 (2017/19) the claimant had come into work early and had set up and served breakfast before starting her housekeeping work. She also had experience of Kitchen Porter duties at the hotel.

***Housekeeping team***

12. Prior to the events described below, the housekeeping team at the hotel  
10 comprised the claimant as Head Housekeeper and three Housekeepers. They were Ms MacLeod, Ms C Johnston and Ms Rak. Ms MacLeod and Ms Johnston worked part time, and I understood that their hours would vary according to the amount of housekeeping work needed. The work undertaken by the housekeeping team covered the public areas of the hotel as well as the  
15 bedrooms.

***Redundancy of hotel manager***

13. Mr Wallace conducted a review of the hotel's costs at the start of 2020. He was concerned that the hotel could not sustain its costs, the largest single  
20 element of which was payroll. The outcome of his review was that the Hotel Manager was made redundant in or around February/March 2020.

***Effect of pandemic***

14. The restrictions brought in by the Scottish Government in response to the Covid-19 pandemic meant that the hotel had to close in March 2020. When  
25 the Coronavirus Job Retention Scheme was introduced, the hotel's staff (including the claimant) were furloughed.

15. It was clear to Mr Wallace that the closure of the hotel would lead to further losses. He revisited his review of staff structure and salary costs. He decided

that instead of departments, there should be what he described as “*multi-functioning self-sufficient areas*”. This meant that each “*area*” such as bar, kitchen and reception would become responsible for their own cleaning and hygiene. This in turn meant that the housekeeping team would look after the bedrooms but would no longer undertake cleaning in these other areas. As there would not be a need to coordinate cleaning across the bedrooms and other areas, Mr Wallace concluded that the role of Head Housekeeper became redundant.

16. In reaching that conclusion, Mr Wallace said that he had considered the option of including all of the housekeepers, including the claimant, in a selection pool. He also considered demoting the claimant to the role of housekeeper. He decided this was not a viable option because the object of the exercise was to save cost and, to achieve the same level of cost reduction as was represented by the Head Housekeeper’s salary, he would have had to make both of the part time housekeepers redundant. At that time, Mr Wallace understood that the claimant and her husband were intending to spend six months in India from the autumn of 2020.

***First consultation meeting***

17. Mr Wallace emailed the claimant on 1 June 2020 (28) to invite her to a virtual meeting “*to discuss your role within the business*”. Following an exchange of emails on 2/3 June 2020 (28-30) a meeting on Zoom was set up for 5 June 2020. The claimant indicated that she would be accompanied by Ms Johnston.
18. The Zoom meeting took place on 5 June 2020. The claimant participated with Ms Johnston. Mr Wallace was accompanied by Ms Nicholson as notetaker. She prepared a note of the meeting (31-32) the accuracy of which I found no reason to doubt. The note confirmed that Mr Wallace explained his intention to make the position of Head Housekeeper redundant and that the claimant’s employment was therefore under threat of redundancy. He also explained how cleaning would be undertaken by area.

19. The note confirmed that the claimant asked if she could still be a housekeeper. No direct answer to that question was recorded but later in the meeting Mr Wallace confirmed that Ms Johnston and Ms MacLeod would still have a job which implied a negative response to the claimant's question.
- 5 20. The note recorded Mr Wallace saying that "*the business will not be in a position to take on new staff upon re-opening, potentially at the end of July, with demand anticipated to be low for the rest of the season*". The note also recorded Mr Wallace telling the claimant that "*there are currently no other vacancies within the hotel*". Towards the end of the meeting, according to the note, the claimant asked if any other staff were going to be made redundant and Mr Wallace replied that the roles of Hotel Manager and Head Housekeeper were the only two.
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21. Following this meeting Mr Wallace wrote to the claimant on 5 June 2020 (34) confirming that she was under threat of redundancy. His letter included the statement "*We normally take on additional staff but we will not be doing that this year*".
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***Second consultation meeting***

22. Mr Wallace and the claimant exchanged emails on 11 June 2020 (35) and a second virtual meeting was arranged for 15 June 2020.
- 20 23. This meeting, again via Zoom, was attended by the same participants as the first meeting. Ms Nicholson prepared a note of the meeting (36-37). As before I found no reason to doubt the accuracy of this. I understood that the claimant had recorded the meeting and there was a transcript of the recording within the bundle (40-48). This served to confirm the accuracy of Ms Nicholson's note.
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24. The note recorded that Mr Wallace had again explained how cleaning of the hotel would be undertaken and why the role of Head Housekeeper would no longer be required. The note also recorded the claimant expressing her view that her redundancy was unfair. She referred to having helped out in other departments "*including doing breakfast, working the bar and waitressing*".
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The note recorded Mr Wallace saying, in response to the claimant asking about other roles, that “*there are no other roles and no other jobs*”.

***Claimant is dismissed***

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25. The claimant was not dismissed at the meeting on 15 June 2020. However, Mr Wallace wrote to her on 16 June 2020 (49-50) including the following paragraphs –

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*“I refer to our virtual meeting held on Friday 5<sup>th</sup> June 2020 at 2pm where I made you aware that due to a business restructure the role of Head Housekeeper was being made redundant and as you were in that role you were under the threat of redundancy. We had a second virtual meeting on Monday 15<sup>th</sup> June 2020 at 2.15pm to discuss it further and for you to ask any questions.*

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*At both meetings I explained that the industry was in a difficult position with many businesses announcing redundancies due to the lack of sales and uncertainty regarding the future. I explained that we were losing money just now in a period where we should and need to make a profit. I explained that we needed to save money and look at ways of reducing costs. I explained that the first stage of this was when the Hotel Manager role was made redundant just before we entered lockdown and that this was now a second stage. I emphasised that it was the role of Head Housekeeper that was being made redundant and this was not a reflection on yourself. Unfortunately, as you were in that role you were under the threat of redundancy.*

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*The business would ordinarily have another 12 employees at this time. However due to the lockdown these roles were no longer required. Going forward the business would run as areas instead of departments. Some areas may still be departments e.g. bar and kitchen and some employees may be asked to help in other areas occasionally. The lack of roles and the need to reduce costs means that there are no alternative roles available.*

Unfortunately, due to the lack of roles there is nothing else we can offer at this time and consequently I have to inform you that you are being made redundant with immediate effect. Under the terms of your contract you are entitled to one month's notice which together with your holiday entitlement means that your final day will be the 24<sup>th</sup> July.”

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26. Mr Wallace's letter advised the claimant that she would not be required to attend for work (pending her termination date) and also advised her of her right to appeal the decision. The claimant did not appeal.

***Hotel reopens/staff changes***

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27. The hotel reopened on 15 July 2020. This was earlier than Mr Wallace had expected. Most of the staff who had been furloughed returned to work. However the Deputy Hotel Manager and a maintenance man announced that they required to shield and a Kitchen Porter went off sick. Also, the Head of Front of House did not return, and was not replaced.

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28. When the hotel reopened, the level of business was unpredictable. Mr Wallace's evidence was that –

*“In July the hotel would normally have 100% occupancy, however due to the concerns around COVID-19, our forward bookings remained very low and as such, planning a staff rota was impossible with any degree of certainty. The hotel lived on a day-to-day basis.”*

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29. Thereafter a number of staff changes took place. These were recorded in a document headed “*Further Recruitment Timeline Explanation*” (67-69). Mr Wallace described the staff changes during his evidence but as that evidence confirmed what was in the document I will set out a number of paragraphs from the document –

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*“The Hotel recruited seven employees following the Claimant’s redundancy. These are explained below:*

5 1 *CS, Barman, resigned in July 2020. AS was recruited in August 2020 into this vacancy.*

10 *The Claimant had not demonstrated these skills during her employment with the Hotel; she had only ever historically supported the bar during busy periods and not within the period of time that the General Manager was employed (since 2016).*

15 *This resignation was not foreseen at the point of the Claimant’s redundancy or by their final date, and as such wasn’t considered as suitable alternative employment. However, if this role should have been considered post-termination for the Claimant, during their employment the Claimant had not demonstrated the required skill set or knowledge as detailed in the Barman Job Description....and as such wasn’t a suitably qualified candidate for the role.*

20 2 *Due to the popularity of the Government’s “Eat Out to Help Out” (EOTHO) scheme, launched 3<sup>rd</sup> August 2020, additional support was required in a couple of areas:*

25 a. *SC, Bar Staff, was recruited in August 2020 for a temporary contract, ending in March 2021. The position was part-time, covering unsocial hours for minimum wage.*

30 b. *ZS, Front of House, was recruited in August 2020 for a temporary contract, ending in September 2020. The position was part-time, covering unsocial hours and weekends, providing waitressing cover in the restaurant for minimum wage. This employee only worked a total of 54 hours before leaving the Hotel’s employment.*

*Neither position was foreseeable at the point of the Claimant's redundancy or by their final date, and as such neither were considered as suitable alternative employment.*

5           3   *The Hotel has an annual arrangement to employ returning students over the summer period, this has been done for the past 5+ years. As a result of the pandemic, no seasonal workers were brought back to the Hotel in June as in previous years.*

10           *In response to multiple members of staff remaining on furlough due to childcare reasons, amongst others, the Respondent called in two students to cover the deficit. They were recruited for a period of one to two months and supported the re-opening of the Hotel following easing of the lockdown measures.*

15           a.   *GW, Front of House with Kitchen Porter duties, was employed from July to September. They provided waitressing cover and kitchen runner support, working weekends and unsocial hours for minimum wage.*

20           b.   *SG, Front of House with housekeeping duties, was employed from July to August. They provided waitressing cover and supported the housekeeping staff, working weekends and unsocial hours for minimum wage.*

25           *These positions were not considered suitable alternative employment for the Claimant, as they were not of equal status to her previous role nor offered any kind of stability.*

30           4    *AM, Kitchen Porter, was recruited in August 2020 to provide cover while PD, Kitchen Porter, was off on long-term sick leave.*

*The replacement of this position was not anticipated, the reason for the sudden recruitment was due to the popularity of the EOTHO scheme. The*

*position was anticipated to be temporary cover until PD recovered; unfortunately, PD resigned in September and so AM was kept on until November 2020 when his temporary contract ran out.*

5 *This position wasn't anticipated at the time of the Claimant's redundancy or by their final date, and as such was not considered as suitable alternative employment. Similar to the FoH roles discussed above, this role was not for a specified length of time, was minimum wage and included unsocial hours. In the time the General Manager had been*  
10 *employed at the Hotel, the Claimant had never supported the kitchen in this capacity.*

5 *CT, Sous Chef, was recruited through an Agency in July 2020 to allow for a one-month handover with JM, Sous Chef, who had a planned leaving*  
15 *date in August 2020.*

*This was a known replacement, however, the role required a particular skill set, as detailed in the Sous Chef Job Description....The Claimant did not have the required skills nor training for this position, and in the time*  
20 *the General Manager had been employed with the Hotel, had never demonstrated such skills or expertise. As such the role was not deemed a suitable alternative."*

30. Ms Coventry was recruited by Mr Wallace into the role of Bar Manager in  
25 January/February 2020 having previously worked at the Inn at Aird a'Bhasiar. She had been due to start in March 2020 but this was delayed until around the end of July 2020. From 1 August 2020 she and Mr M Nuamann, who worked at reception, were appointed as Duty Managers because the Deputy Hotel Manager had required to shield. They received a modest pay rise to  
30 reflect this.

31. I understood that the Barman (CS) had left unexpectedly on 28 July 2020 and the hotel had the CV of his replacement (AS) on file. Referring to the

recruitment of AS with effect from 10 August 2020, Ms Coventry said that he was barista trained and had recent bar experience where he had used the same electronic point of sale (“EPOS”) system as the hotel. Referring to the recruitment of SC, Ms Coventry said that he had worked on and off at the hotel and had set up the tills, EPOS system and the card machines. The claimant asserted that she could have learned to use the EPOS system. I believed that to be true, but I accepted Ms Coventry’s evidence that the hotel’s bar was busy in August 2020 and, in effect, she needed bar staff who could hit the ground running.

**Claimant’s grievance**

32. On or around 1 October 2020 the claimant submitted a letter to Mr Wallace (55) which she described as *“a formal grievance with reference to your decision to make me redundant as Head Housekeeper at the hotel with effect from 24<sup>th</sup> July 2020”*. She referred to Mr Wallace’s statement that *“the business will not be in a position to take on new staff upon reopening, potentially at the end of July”*.

33. The claimant’s grievance letter continued –

*“You subsequently offered me no alternative potential positions, despite my having experience in several other parts of the business, several of which could be anticipated to require more staff once the hotel was open and operating again.*

*“I have no specific dispute over the redundancy procedure you followed, hence my decision not to appeal my redundancy at the time. However I am now aware that, starting either before or after my date of redundancy (24.07.20), by the beginning of September you had decided to employ in excess of 10 new and additional staff in various areas of the hotel – including housekeeping. As a result of this I can only conclude that my redundancy was not a genuine one, and that I have little choice other than to take steps to make a claim for unfair dismissal.”*

34. Mr Wallace replied on 5 October 2020 (56). His letter included the following paragraphs –

5 *“At the end of June we had 19 people (including yourself) on the monthly payroll and 6 on the weekly payroll. At the end of September we had 19 people on the monthly payroll (including one person on zero hours) and 7 people on the weekly payroll (including one relief Chef and one relief KP). Since the end of September the monthly payroll has been reduced by one (when Aleksandra left) and the position is not being filled. In summary, when you were made redundant we had 25 employees (including you) and now we*  
10 *have 24 (excluding the girl on zero hours) which will shortly become 22 or 23 depending on what happens in the kitchen.*

*There have been no suitable full time alternative positions that could have been offered to you since you were made redundant.”*

### **Mitigation**

- 15 35. Following her dismissal the claimant’s mental health had been adversely affected. She worked for a few days at the Co-op in Broadford (where her husband was employed) but felt unable to cope with this. She explained that her employment options were limited because most of the jobs available in Broadford were in the hospitality industry which was badly affected by the  
20 coronavirus pandemic. Also, her ability to work elsewhere was constrained by her being unable to drive. The claimant had been in receipt of benefit, and had recently secured employment which started on 13 June 2021.

### **Comments on evidence**

- 25 36. It is not the function of the Tribunal to record every piece of evidence presented to it and I have not attempted to do so. I have focussed on those parts of the evidence which had the closest bearing on the issues I had to decide.

37. All of the witnesses were credible. Any differences in their versions of events were matters of recollection and perception and did not impact adversely on their credibility.

### **Submissions**

5 38. The claimant submitted that the evidence demonstrated that there had been opportunities for employment at the hotel which she would have been more than capable of filling. She would have done anything to continue working. However she was not asked or approached about these roles.

10 39. It had been made clear at the time of the claimant's dismissal that her redundancy was based on saving money. Despite this, promotions (to Duty Manager) and pay rises were given.

15 40. The claimant argued that she had not been offered or provided with any opportunities for training. There had simply been an assumption that she would be incapable of fulfilling an alternative role. She asserted that her redundancy had been unfair.

20 41. Ms Henderson reminded me of Mr Wallace's evidence that the hotel had sustained losses in 2018/19 and 2019/20. It was inevitable that the position would be exacerbated by the impact of the pandemic. This had led to the Hotel Manager's redundancy, and then the claimant's. Mr Wallace had sole responsibility for people management at the hotel and these were his decisions.

25 42. Following the decision to dismiss the claimant as redundant in June 2020, three positions had become available during her notice period which expired on 24 July 2020. One of these was the role of Sous Chef for which the claimant herself accepted that she would not have been a suitable candidate. The other two were Front of House/General Assistant roles.

43. Ms Henderson acknowledged that the claimant could be regarded as a suitable candidate for these roles in terms of ability to do the job. However, these were short term roles involving zero hours contracts and unsocial hours

and were remunerated at minimum wage. In not offering either of these positions to the claimant, Mr Wallace took account of the adverse financial consequences for the claimant. She would have earned less, and would still have ended up as redundant but with a lower redundancy payment.

5 44. Ms Henderson argued that the positions which arose after the claimant's employment ended on 24 July 2020 were unforeseen. AS would not have been employed but for CS leaving unexpectedly. SC would not have been employed but for the EOTHO scheme. In both cases there had been a need for trained hands in the bar. Ms Coventry had AS's CV to hand. In contrast,  
10 she had no knowledge of the claimant's bar experience, and she needed someone who could operate the EPOS system immediately.

#### **Applicable law**

45. The right not to be unfairly dismissed is contained in section 94(1) ERA –

*“An employee has the right not to be unfairly dismissed by his employer.”*

15 46. Section 98 ERA deals with whether a dismissal is fair or unfair –

*“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*

20 *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*

*(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*  
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*(2) A reason falls within this subsection if it –*

*...(c) is that the employee was redundant...*

(4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

5 (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

10 (b) *shall be determined in accordance with equity and the substantial merits of the case."*

47. Redundancy is defined in section 139(1) ERA –

15 *"For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*

(a) *the fact that his employer has ceased or intends to cease -*

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(i) *to carry on the business for the purpose of which the employee was employed by him, or*

(ii) *to carry on that business in the place where the employee was so employed, or*

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(b) *the fact that the requirements of that business –*

(i) *for employees to carry out work of a particular kind, or*

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(ii) *for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish."*



**Discussion and disposal**

48. There was no dispute between the parties that, at the time when Mr Wallace decided to dismiss the claimant, as recorded in his letter of 16 June 2020, he did so because the position of Head Housekeeper held by the claimant was being made redundant. Redundancy is one of the potentially fair reasons for dismissal. However, not every redundancy dismissal is fair.
49. Two important elements in any redundancy process are (a) consultation with the employee (or employees) at risk of redundancy and (b) consideration of alternatives to redundancy.
50. The profitability of the hotel was Mr Wallace's responsibility and it was entirely reasonable for him to review the financial position and decide on what he considered to be appropriate action to achieve savings. Having done so, and having already made the Hotel Manager redundant, he identified the role of Head Housekeeper as one without which the hotel could operate if the staff structure and system of working were changed. That was a reasonable conclusion for him to have reached. It triggered the need for consultation with the claimant before a final decision was made.
51. Having formed the view that the role of Head Housekeeper was at risk of redundancy, Mr Wallace engaged in consultation with the claimant. He held two meetings with her, on 5 June 2020 and 15 June 2020. He explained the need for the hotel to save money. In the course of their discussion the claimant raised the issue of whether she might continue to be employed as a housekeeper as opposed to Head Housekeeper. Mr Wallace had an answer to this, ie that it would not have been viable to dispense with the services of the two part time housekeepers. That was an operational matter upon which Mr Wallace was entitled to take a view.
52. The process of consultation also covered the issue of whether there might be an alternative role for the claimant within the hotel. On the face of it, Mr Wallace was dismissive of this, saying "*There are no other roles and no other jobs*". However, I was satisfied that Mr Wallace was in a position to say that

because he had given proper consideration to the hotel's financial position and its operational requirements when allowed to reopen after lockdown. It was a time of uncertainty – when he took the decision to dismiss the claimant Mr Wallace did not know when the hotel would be able to reopen nor what level of business the hotel would enjoy once it reopened. It was a decision he was entitled to make.

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53. Following that decision, the hotel was able to reopen on 15 July 2020. This was earlier than Mr Wallace had expected. The seasonal staff usually engaged over the summer months had not been engaged. When Mr Wallace told the claimant in his letter of 16 June 2020 that "*these roles were no longer required*" I was satisfied that was his genuinely held belief at that time.

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54. The hotel's level of business upon reopening was unpredictable. The need for two seasonal General Assistants emerged. I was satisfied that it would not have been reasonable to offer one of these positions to the claimant. It would almost certainly have been to her disadvantage financially.

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55. Once the claimant's employment had come to an end on 24 July 2020, the availability of roles within the hotel was only relevant to the fairness or otherwise of her dismissal if it indicated that the decision to dismiss her as redundant was in some way a sham. I would need to be persuaded that the respondent knew, or ought to have known, that such roles were likely to become available and that they were roles which would be suitable for the claimant.

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56. Suffice it to say that I was not so persuaded. I accepted Mr Wallace's evidence that the hotel was living "*on a day-to-day basis*". The staff changes recorded at paragraph 29 above could not have been anticipated (apart from the departure of the Sous Chef, but that did not have a bearing on the fairness of the claimant's dismissal). The introduction of the EOTHO scheme could not have been foreseen.

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57. It seemed to me that in preparing the document from which I have quoted at paragraph 29 above, the respondent has sought to justify in retrospect why

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the claimant would not have been suitable for the roles which became available, or why the roles which became available would not have been suitable for the claimant. I am not convinced that the respondent actually considered at the time whether any of these roles should be offered to the claimant.

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58. However, that did not impact on the fairness of the claimant's redundancy dismissal. What that document recorded was the respondent reacting to changes of circumstances as they happened. Nothing contained in that document indicated that the decision to dismiss the claimant as redundant was a sham. I could understand and sympathise with the claimant's perception of unfairness but there was nothing here to undermine what had been a fair dismissal in a genuine redundancy situation.

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59. Accordingly, this claim could not succeed and required to be dismissed.

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Employment Judge: Sandy Meiklejohn  
Date of Judgment: 14 July 2021  
Entered in register: 19 July 2021  
and copied to parties

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