



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100177/2020

Hearing Held in Glasgow on 25 – 29 October 2021

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**Employment Judge A Strain
Tribunal Members: Mr J McElwee
Ms M McAllister**

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Mr G Urquhart

**Claimant
Represented by:
Self**

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Compass Hospitality (UK) Limited

**First Respondent
Represented by:
Ms L Whittington
Counsel**

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**Buxani GoGlasgow Hotel Limited
T/A GoGlasgow Hotel**

**Second Respondent
Represented by:
Ms L Whittington
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

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- (1) the claimant's claims in respect of disability discrimination, breach of contract (notice pay) and unfair dismissal are unsuccessful and are dismissed.

REASONS

Background

1. The claimant represented himself. He asserted claims in respect of unfair dismissal, notice pay and disability discrimination under section 15 of the Equality Act 2010 (**EA 2010**).
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2. Both respondents were represented by Ms L Whittington, Barrister.
3. The parties had lodged individual bundles of documents with the Tribunal and, following conclusion of the evidential hearing, an updated Schedule of Loss was produced by the claimant. The respondents' bundle is referenced by the prefix "R" and the claimant's bundle is referenced by the prefix "C".
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4. It was agreed by the Parties that the claimant had a qualifying disability (anxiety and depression/PTSD) in terms of section 6 of the EA 2010. The respondents did not accept that they had knowledge at the relevant time that the claimant had a disability.
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5. The claimant gave evidence on his part along with a former colleague Ms K Thomson and Mr A Khan (Film Producer). The respondent led evidence from Mr A Singh, VP (Ops) of the First Respondent and Ms Samantha McLaughlin, Sales Manager of the Second Respondent.

20 Findings in Fact

6. Having heard the evidence and considered the documentary evidence before it the Tribunal made the following findings in fact:
 1. The Claimant commenced employment with Crerar Hotels Limited on 23 February 2015. His employment transferred to the Second Respondent under TUPE on 18 May 2019 when the Second Respondent acquired the business of Crerar Hotels Limited.
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 2. The Claimant was employed by the Second Respondent as the General Manager under a contract of employment which he signed on 2 February 2015. The contract of employment provided that

where an employee had in excess of 4 years' service he would be entitled to one week's notice per calendar year of employment.

3. In December 2015 the Claimant suffered a mental breakdown and was admitted to hospital. He was on sick leave until April 2016.

5 4. Since December 2015, the Claimant has continually been under medical supervision to ensure his wellbeing, medication and to deal with the post-traumatic stress disorder.

5. No personnel file in respect of the Claimant was provided to either Respondent on transfer of the business from Crerar Hotels Limited.

10 *Bollywood Investigation*

6. The Claimant was investigated on 22 May 2019 regarding an alleged incident involving disputed additional charges that may have jeopardised future business with Bollywood Producers and his behavior towards his line manager, Mr Singh.

15 7. The Claimant attended a disciplinary on 7 June 2019 and received a written warning on 10 June 2019 (R168 – 169).

Claimant's' mental health

20 8. The Claimant emailed Umar Farooq on 10 June 2019 (R178) stating *"Thank you for your time on Friday and hopefully you had a safe onward journey, I just want to update you as a direct result of reading some of the information on the statements on Friday, I have made arrangements to attend the medical staff who have looked after me and hopefully they can amend my medication to assist me deal with such allegations and get me through this period."*

25 9. Mr Farooq responded by email of the same date (R177) denying that the Second Respondent had knowledge of previous or current medical conditions.

10. The Claimant emailed Umar Farooq on 1 July 2019 (R172) stating *"As a direct result of this ongoing witchhunt and as mentioned*

previously on the accusations made towards my mental health and well being, I am now under continued review by my care as a direct result of this ongoing bullying.”

5 11. Umar Farooq responded by email of the same date (R171) apologizing that the Claimant felt the investigation had contributed towards his medical condition and that he sought medical assistance.

10 12. At no point during the Claimant’s employment with the Second Respondent did the Claimant inform the Second Respondent that he suffered from a disability or anxiety and depression.

Unauthorised Increase in Pay

15 13. The Claimant was investigated on 1 July 2019 in relation to an unauthorised increase in a colleague’s pay. The outcome of that investigation was that no further action was deemed necessary (R170 – 171).

Allegations of Bullying and Harassment

20 14. The Claimant considered the investigations had amounted to bullying, harassment and were a “witch hunt”. These allegations were fully investigated by Mr Farooq in meetings on 10 July 2019 (R184 – 217) with Mr Singh and the Claimant. The allegations were not upheld.

Downturn in Business

25 15. The Second Respondent faced a significant downturn in profitability and did not meet expected targets (R254 – 308). The Claimant accepted this and that there was a significant shortfall from budgeted targets throughout 2019.

Redundancy Process

16. The Second Respondent considered how it could save costs in light of the significant downturn in business and profitability. Mr Singh

considered that a restructure of the senior management of hotel could save costs.

- 5 17. The Second Respondent considered that it could subsume the duties and responsibilities of the General Manager Role within the existing management structure thereby saving the salary and costs of the General Manager Role.
18. Mr Singh produced a “business Case” (R217-218) which was given to the claimant in support of the restructuring.
- 10 19. The Claimant was consulted about the proposed redundancy in meetings on 23 September 2019 (R222), on 30 September 2019 (R225 – 229) and on 15 October 2019 (R246 – 249).
20. The Second Respondent asked the Claimant to consider available vacancies (R241). There were no suitable alternative vacancies.
- 15 21. The Claimant was told at the conclusion of the meeting on 15 October 2019 that his employment was being terminated on the grounds of redundancy.
- 20 22. By letter of 17 October 2019 (R250 – 252) the Second Respondent confirmed to the Claimant that it was terminating his employment on the ground of redundancy because its requirements for a Hotel General Manager at that workplace had ceased or diminished.
23. The Claimant was paid in lieu of 4 weeks' notice in the sum of £6346.15.
24. The Claimant received a redundancy payment of £3150.
- 25 25. The Claimant also received a payment in respect of accrued holiday pay of 8.6 days at £317.30 = £2,538.40.
26. The effective date of termination was 15 October 2019.
27. As at the date of the tribunal no new General Manager had been recruited and the management structure retained the same number of posts as there were after the restructuring.

The Relevant Law

Unfair Dismissal/Redundancy

7. Sec 139(1) of the Employment Rights Act 1996 states (in relevant part) that for the purpose of that 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 (i) to carry on the business for the purposes 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 (b) the fact that the requirements of that business (i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.
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8. Provided a genuine redundancy situation exists (ie, it is not a mere sham to provide pretextual cover for a dismissal), the Tribunal does not have jurisdiction to determine whether an employer's decision to have redundancies either at all or in the numbers decided upon rather than take an alternative course of action was unfair or unreasonable, or decide an unfair dismissal claim on the basis that the decisions the employer made on those matters were unfair or unreasonable.
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9. In a genuine redundancy situation, the decision whether or not to make posts redundant is a business decision for the employer. ***Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298.***
10. In determining whether a dismissal was fair, the Tribunal is obliged to (a) determine that issue based on the facts known and beliefs held by the employer at the time of dismissal (i.e., not judge the dismissal with the benefit of hindsight, although the Tribunal can take into account matters which an employer ought reasonably to have known) (b) assess the fairness of the dismissal as a whole, not focus on only the substantive fairness or only the procedural fairness of the dismissal.
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11. A dismissal is unfair under s.98(4) of the Employment Rights Act 1996 if, and only if, the dismissal was outwith the band of reasonable responses
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open to the employer at the time. The Tribunal must not substitute its own judgment for that of the employer, and must not ask itself what it would have done in the same circumstances – the Tribunal is obliged to focus on what the employer did, based on what the employer knew and believed at the time, in determining whether the employer acted reasonably in dismissing the employee for its stated reason.

Notice pay

12. Section 86(1) of the Employment Rights Act 1996 (“**ERA**”) provides for minimum statutory notice periods to be given to employees at the rate of 1 week per year of employment. 1 week’s notice pay applies where an employee has less than 1 year’s service. Employees may be entitled to greater periods under the term of their contracts of employment.

Discrimination in terms of section 15 of the EA 2010

Unfavourable Treatment

13. Section 15 of EA 2010 provides:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Unfavourable treatment can include dismissal.

Submissions

14. Both parties lodged written submissions and supplemented them with oral submissions.

Claimant's Submissions

The Claimant submitted that:

1. *Breach of Contract*

5 The Respondents were in breach of contract in that a reasonable period of notice for someone in such a senior role as him would be 3 to 6 months notwithstanding what was stated in the contract. In his submission the contract did not reflect the agreement of the parties and there was a “word” missing.

2. *Unfair Dismissal*

10 The Claimant considered that there was a “game plan” by Mr Singh (which included Ms McLaughlin) to get rid of him as cheaply as possible. The Claimant asserted that Mr Singh had raised the topic of how high his salary was on a number of occasions.

15 This game plan included trying to force the claimant out through a conduct route. The Claimant submitted that the investigations of 22 May, 7 June and 2 July 2019 were all part of this plan.

20 The Claimant also submitted this process was designed to force an “ ill health resignation through campaign of relentless manipulation, grinding down, passive aggression and humiliation in front of junior members of staff resulting in a mental health and wellbeing breakdown”.

25 When this “game plan” had failed then, in the Claimant’s submission, the Respondents resorted to what he called a “sham redundancy process”. It was a “sham” because a 117 bed hotel could not operate without a General Manger and the outcome was a *fait accompli* – Ms McLaughlin was to be the new General Manager at a significantly reduced salary.

3. *Disability Discrimination*

The Claimant submitted that the Second Respondent was aware of his disability and had deliberately targetted and bullied him to try and force him out.

He submitted that the Second Respondent was aware through conversations he had with Mr and Mrs Buxani, Mr Mathew Wellborne and Umar Farooq. Mr Singh was aware form the Bollywood incident (where there was reference to the Claimant having had a mental breakdown) and communication the Claimant had with Umar Farooq about having to seek assistance from his doctor.

Respondents' Submissions

1. *Breach of Contract*

The notice provisions contain clear contractual wording that was signed by the Claimant and his previous employer.

There was no evidence of alleged common mistake in the wording; no documentary or oral evidence provided from any representative of Crerar Hotels.

If (as was suggested by the Claimant) the tribunal placed the word "additional" in contract then term would not make sense; the clause provides a maximum of 12 weeks and it was unclear whether the Claimant was suggesting that he would be owed four months notice pay, three months notice pay or arguably five months notice pay if each section was accumulative.

2. *Unfair Dismissal*

The Claimant was dismissed by reason of redundancy in accordance with section 139(1)(b) of ERA 1996. This was a genuine redundancy situation due to reorganisation and/or restructuring of the management team.

There had been fair and meaningful consultation with the Claimant.

Alternatives had been considered and no viable alternative to redundancy had been found.

The dismissal was fair.

3. *Disability Discrimination*

There were no discriminatory acts, conduct or policies that arose out of the Claimant's disability.

5 The Claimant was given ample opportunity during the hearing to clarify what he considered was the unfavourable treatment (s.15(1)(a)) that he had experienced. He stated explicitly that being made redundant was not the unfavourable treatment alleged and instead considered the "bullying treatment and grinding down" to be the unfavourable treatment he experienced.

10 The unfavourable treatment did not occur and the Claimant has failed to prove a that he was subjected to any detriment, disadvantage or unfavourable treatment.

15 No causal link was established between something that arose as a consequence of his disability and unfavourable treatment has been made out.

It had not been established that the Respondents knew or could reasonably be expected to know that the Claimant was suffering from a disability at the time of the alleged unfavourable treatment.

Discussion and Decision

20 *Observations on the Evidence*

15. The Tribunal generally found all witnesses (apart from the Claimant) to be credible and reliable.

16. The Tribunal considered and found that the Claimant's evidence was inconsistent and exaggerated (as asserted by the Respondent). He was evasive when asked questions under cross examination and had to be directed by the tribunal on a number of occasions to answer the question he was being asked rather than make a statement or answer the question he wanted to answer.

17. Examples of this were his insistence in his evidence that handwritten notes of meetings had been changed and then stating that he had not received

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handwritten notes for the meeting on 23 September 2019. Furthermore, he maintained that the typed notes of that meeting were in fact handwritten notes.

- 5 18. He repeatedly made reference to bullying and harrasment on a regular basis but was unable to specify particular incidents other than the 3 investigations.
19. He asserted that Ms McLaughlin had been part of a plan to get rid of him from May 2018 onwards despite Ms McLaughlin having been on maternity leave from June 2018 to February 2019.
- 10 20. His evidence regarding knowledge of his disability was wholly inconsistent. He stated he had informed Mathew Werlbourn of the mistakes in the contract of employment and then conceded he had not, in fact, done so.
- 15 21. He refused to accept any responsibility for the downturn in business suffered by the Second Respondent and asserted this was due to the bulying and harrasment he was subjected to which prevented him from doing his job. He was unable to give any examples of this other than the 3 investigations.
- 20 22. Accordingly, where there were any conflicts between the evidence of the Claimant and that of the Respondents the tribunal prefferred and accepted the evidence of the Respondents.

Breach of Contract

23. The Tribunal considered the terms of the contract of employment to be clear and express. The notice provisions contained clear contractual wording that was signed by the Claimant and his previous employers.
- 25 24. There was no evidence of alleged common mistake in the wording and no documentary or oral evidence provided from any representative of his previous employers.

25. The Tribunal find that the Claimant was entitled to one week's notice pay per complete year of service. He had been paid this and accordingly his claim fails.

Unfair Dismissal/Redundancy

- 5 26. The Tribunal finds that the Claimant's dismissal was by reason of redundancy and was procedurally and substantively fair for the following reasons:
- 10 a. The Second Respondent's business was clearly going through a significant downturn as was clearly vouched by the monthly financial reports produced by the Claimant.
- 15 b. Mr Singh went about restructuring in order to reduce costs. He identified that the role of General Manager could be made redundant and the duties and responsibilities of that role redistributed amongst existing management thereby saving significant salary overhead. The Claimant's dismissal was wholly or mainly attributable to the fact that the requirement for a General Manager had ceased or diminished. In a genuine redundancy situation, the decision whether or not to make posts redundant is a business decision for the employer – not for the tribunal. ***Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298.***
- 20 c. The Claimant had been consulted with on 23 and 30 September and 15 October 2019. The consultation had been fair and meaningful. Alternatives had been discussed and ruled out. No viable alternative had been found.
- 25 d. To date, no new General Manager has been appointed and the managerial structure and headcount remains the same.

Disability Discrimination

27. The Claimant's claim is under section 15. He asserts that he received unfavourable treatment arising from his disability. He asserted that the
30 redundancy was not the unfavourable treatment, rather it was the bullying, harrasment and grinding down he experienced. This appeared to be under

reference to the 3 investigations that had been carried out by the Second Respondent. No other incidents were specified.

5 28. The Tribunal were satisfied that the investigations carried out by the Second Respondent were necessary and appropriate. Further they were conducted fairly and reasonably.

29. In any event the tribunal could see no link to the Claimant's disability and the investigations. It could not be said that the investigations were unfavourable treatment arising from his disability.

10 30. Further, the Tribunal accepted and found that the Second Respondent had no knowledge of his disability at the relevant time (the dates of the investigations).

31. The Tribunal accordingly finds that the claim under section 15 is unsuccessful.

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Employment Judge: Alan Strain
Date of Judgment: 18 November 2021
Entered in register: 23 November 2021
and copied to parties

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