



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Paul Ricketts

AND

Respondent

S W Staff Agency Limited

(formerly Eric Keith Richardson Limited)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

ON

15 and 16 November 2021

By Cloud Video Platform

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In Person

For the Respondent: Miss K Barry of Counsel

JUDGMENT

The judgment of the tribunal is that the claimant's claims for detriment and dismissal arising from protected public interest disclosures are dismissed.

RESERVED REASONS

1. In this case the claimant Mr Paul Ricketts claims that he has been automatically unfairly dismissed, and suffered detriment, and that the principal reason for this was because he had made four protected public interest disclosures. The respondent asserts that the claimant was dismissed by reason of redundancy and has insufficient continuity of service to complain of unfair dismissal in that respect, and it denies the unfair dismissal and detriment claims.
2. The parties have consented to this matter being heard by an Employment Judge sitting alone pursuant to section 4(3)(e) of the Employment Tribunals Act 1996.
3. I have heard from the claimant. For the respondent I have heard from Mr Bektas Ketenci, Mr Nicolas Legendre, and Mr Eric Keith Richardson.
4. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. The Facts:
6. This claim involves the Richardson Hotels Group (“the Group”), the proprietor of which is Mr Eric Keith Richardson, from whom I have heard. This Group has a number of associated companies. Richardson Hotels Limited runs the Grand Hotel in Torquay in Devon, and the Falmouth Hotel in Falmouth, Cornwall. The Royal Beacon Hotel Limited runs the Royal Beacon Hotel in Exmouth, Devon. Richardson Hotels (Grosvenor) Limited runs the Abbey Sands Hotel in Torquay, Devon. Eric Keith Richardson Limited is the named respondent to this case and is an employment company which employs and provides staff to the Group. This included the claimant. It has now been renamed as SW Staff Agency Ltd and is therefore the correct respondent to the claimant’s claims.
7. Although Mr Richardson is the proprietor of the Group, he is not involved in the day-to-day management of the hotels, which is entrusted to an Executive Team. This Executive Team includes the respondent’s Group General Manager Mr Bektas Ketenci, from whom I have heard, and Mr Nicolas Legendre, who is the respondent’s Executive Head Chef, from whom I have also heard.
8. The claimant Mr Paul Ricketts was employed by the respondent as the General Manager of the Falmouth Hotel from 8 October 2018 until his dismissal on 31 August 2020. The relevant events in this claim occurred against the backdrop of the onset of the Covid-19 pandemic and the Government imposed lockdowns under the various Coronavirus Regulations.
9. The relevant events commenced with effect from Friday, 20 March 2020. At 5 pm on that evening the Prime Minister addressed the nation and made an announcement that all bars and restaurants were to close immediately because of the Covid-19 pandemic. The claimant was on leave that day but received telephone calls from his team asking whether to close the restaurant and bar at the Falmouth Hotel that evening. The claimant’s line manager is the respondent’s Group General Manager Mr Bektas Ketenci. The claimant was unable to make contact with Mr Ketenci and decided to close the restaurant and bars. Meanwhile the respondent had noted that the relevant lockdown regulations did not at that stage appear to include hotels, and the respondent decided to continue trading with additional hygiene measures pending clarification.
10. On the morning of Saturday, 21 March 2020 the claimant sent an email to Mr Ketenci which is relied upon by the claimant as his first disclosure. The claimant explained that the respondent was required to close all public areas and that by not doing so he believed they were putting people at risk, “including our staff, guests and the local community”. Later that day the claimant telephoned Mr Richardson to express his concerns. He confirmed these concerns in a subsequent email on 21 March 2022 to Mr Richardson. This in itself was unusual because as noted above Mr Richardson was not normally involved in the day-to-day running of the hotels, which he left to his Executive Team. The claimant complained to Mr Richardson that keeping the bar and restaurant open was the wrong decision and was a risk to both guests and the local community because of the spread of the potentially fatal virus. This telephone conversation and subsequent email are relied upon by the claimant as his second and third disclosures.
11. The following day, 22 March 2022 was Mothering Sunday, and a large number of guests had booked for lunch at the restaurant. The claimant sent another email to Mr Richardson on the morning of 22 March 2022 asking for permission to close the restaurant because being forced to keep it open was against Government advice and was likely to have a devastating effect on people’s safety. Meanwhile the respondent had taken legal advice, and had sought clarification from different local authorities, as to whether the lockdown applied to hotels as well, which was not clear from the Government guidelines.
12. The parties differ in their recollection as to what happened next. Mr Richardson recalls he may have telephoned the claimant on the morning of Mothering Sunday (22 March 2022), and although frustrated with the claimant’s attitude and persistence, conceded that if the claimant wished to close the restaurant at the Falmouth Hotel then he was allowed to make that decision. The claimant denies receiving that concession by telephone, because the restaurant remained open despite his concerns.

13. In any event the respondent's Executive Team took the decision on the morning of Monday 23 March 2020 to close the restaurant and the bars at their various hotels and to provide room service only. On the following day 24 March 2020, the Government released further guidance stating that hotels were to close except to the extent they were accommodating key workers. The Government also announced the introduction of the Coronavirus Job Retention Scheme under which employees could be placed on paid furlough leave. The Falmouth Hotel did have a few key workers from Falmouth Docks, and it was kept open with a limited service to accommodate these workers, but it was then otherwise closed to the public.
14. The respondent's Executive Team then decided to place all of its staff on furlough leave, and Mr Ketenci attended at the Falmouth Hotel on 24 March 2020 to supervise the closing of the hotel and to seek agreement of the various members of staff for them to go on furlough leave. He had a large batch of furlough letters for the various employees.
15. There is a conflict of evidence between the claimant and Mr Ketenci as to what then happened at their meeting. The claimant asserts that Mr Ketenci presented him with a pre-typed resignation letter in an envelope, and stated that Mr Richardson was very angry with him for challenging his decision about whether or not to close the restaurant, and "wanted him gone". The claimant asserts that he refused to sign the resignation letter, but agrees that he did sign and accept the terms of his furlough leave on a separate letter. Mr Ketenci denies this version of events and says that there was no suggestion that Mr Richardson was determined to take action against the claimant, and that there was no resignation letter. He accepts that he had a number of furlough letters, one of which was for the claimant which he signed and accepted.
16. On balance I prefer Mr Ketenci's version of events for these reasons. First, both Mr Ketenci and Mr Richardson denied that Mr Richardson had become angry with the claimant and/or was trying to manufacture his resignation, and the weight of evidence is against the claimant in this respect. The claimant also accepted in cross examination at this hearing that he did not actually see the alleged resignation letter, and it has not been adduced in evidence. In addition, given that the claimant did not have sufficient continuity of employment to complain of unfair dismissal, if it were really the case Mr Richardson was determined to terminate his employment then presumably would have just dismissed the claimant at that stage. I therefore find on balance that Mr Ketenci did not present the claimant with a pre-typed resignation letter to seek to encourage him to terminate his own employment.
17. The claimant was then absent from work on paid furlough leave, and the Hotel remained closed. The Government announced that hotels could re-open on 4 July 2020. Meanwhile the lockdown had unsurprisingly had a grave financial impact on the respondent's business. Whereas a profit had been returned during the previous trading period in excess of £204,000, the respondent's Group was now looking at a loss in excess of £480,000 for the same period. These problems were of course consistent with the serious financial problems which affected the hospitality industry generally across the country.
18. The respondent was left with no option other than to consider cutting costs to ensure the viability of the Group and its various Hotels. In addition, because of low occupancy levels, the respondent envisaged very difficult trading conditions going forwards. The respondent's Executive Team therefore undertook a detailed review of the financial position of the staff structures in each hotel, and this was reviewed weekly during June and July 2020.
19. The respondent's Executive Team then prepared a detailed report which included proposals for redundancies. There were five main proposals. The first was that all Hotel Managers would be removed from the structure with Mr Ketenci undertaking all those roles from Head Office at the Grand Hotel with assistance from more junior managers. The second was that all spa and leisure centres would close, with swimming pools to be operated by Hotel Reception in each case. Thirdly there was a reduced requirement for technicians, sous chef positions and food and beverage management positions such as bar managers. Fourth was the proposal to remove the Sales and Marketing Manager. Finally, the respondent proposed to shut the Abbey Sands Hotel entirely until April 2021.

20. These decisions made by the respondent's Executive Team at that time, having analysed what limited management functions were still required were against the backdrop of the earlier lockdown, very low occupancy, and the grave financial concerns, all caused by the pandemic.
21. The Grand Hotel in Torquay did not currently have a General Manager in post. Against this background the respondent did not intend to recruit to this position. The remaining three General Managers, at Falmouth, the Royal Beacon Hotel, and at Abbey Sands, were all at risk of redundancy. This included the claimant at Falmouth, and Mr Suprasan Ghosh the General Manager at the Royal Beacon Hotel. At that time the claimant's salary was £45,000 pa, and that of Mr Ghosh was £35,000 pa because he managed a smaller hotel.
22. When the Falmouth Hotel was allowed to re-open in July 2020, albeit in a much-reduced capacity, Mr Ketenci required some managerial supervision. He decided to recall Mr Ghosh from furlough leave to assist in this role, rather than the claimant, because it was a cheaper option. Mr Ghosh was recalled on a temporary basis to assist the respondent's Executive Team in overseeing the Falmouth Hotel in its much-reduced capacity, as well as retaining his (reduced) managerial responsibilities at the Royal Beacon Hotel.
23. The claimant's perception is that Mr Ghosh was recalled from furlough leave and appointed in his place as General Manager of the Falmouth Hotel and that this decision was taken because of the claimant's earlier protected disclosures. Work colleagues of the claimant at Falmouth had indicated to him that Mr Ghosh was using his previous office and to all intents and purposes was now the manager, and to that extent it was understandable that the claimant felt that he might have been replaced. However, I accept the respondent's evidence that this was not the case, and that Mr Ghosh was recalled from furlough leave to assist the Executive Team as a junior manager with reduced duties at both the Royal Beacon Hotel and the Falmouth Hotel. There was a clear financial rationale for this which was simply that his salary was less than the claimant's salary. In addition, all four General Manager positions were eventually made redundant, which included both the claimant and Mr Ghosh, which demonstrates that it was a temporary arrangement only.
24. The respondent then embarked on a redundancy process, which was undertaken by Mr Nicolas Legendre, who is the respondent's Executive Head Chef within its Executive Team, and from whom I have heard. The respondent was advised on the process, and because of the number of potential redundancies managed an election process for Elected Employee Representatives. At the Falmouth Hotel alone the respondent proposed to make 27 positions out of 94 redundant. This was due to take place over two phases. The respondent then held collective consultations with the Elected Employee Representatives on three occasions, which took place on 20 July 2020, 22 July 2020, and 24 July 2020. At the third of these meetings the Elected Employee Representatives confirmed that they agreed with the respondent's proposed structure which was to remain after the redundancies, and agreed with the proposed selection criteria. This included the redundancy of all four General Manager positions.
25. Mr Legendre then held individual consultation meetings with the claimant on both 4 August 2020 and 17 August 2020 at which he was informed that he was at risk of redundancy, and during which they discussed possible alternative positions, for which the claimant was invited to apply. Mr Legendre informed him of at least 11 potential alternative positions, including Deputy General Manager at the Grand Hotel, and Assistant Group Operations Manager. The claimant only expressed interest in these last two positions, but they were based in Torquay at the Grand Hotel which was a lengthy commute from where the claimant lived in Cornwall. In addition, the Assistant Group Operations Manager position only attracted a salary of £22,000, which was a significant reduction from the claimant's salary of £45,000.
26. Meanwhile the claimant had made a number of suggestions to avoid his redundancy which were as follows, but still based on him retaining his position as General Manager at Falmouth: first, to work a reduced week to reduce the payroll; secondly, to take a pay cut; thirdly, to take a demotion; fourthly, to take a new post overseeing more of the Hotel venue; and finally to remain on furlough leave but to pay the expense which the company would incur in doing so.

27. Mr Legendre did not agree to these proposals because they were temporary and with a view to the claimant returning to his General Manager role. The respondent had already decided that the General Manager role was not a post which it could support in any of the four hotels going forwards. Mr Legendre subsequently sent an email to the claimant on 18 August 2020 asking him if he wished to apply for any of the available positions. The claimant did not respond, and Mr Legendre telephoned him on about 23 August 2020 to clarify the position, but the claimant confirmed that he would not be applying for the available roles for financial reasons.
28. Following this consultation process Mr Legendre took the decision to terminate the claimant's employment by reason of redundancy. He wrote to the claimant by letter dated 24 August 2020 confirming the termination of his employment by reason of redundancy. This was with effect from 31 August 2020 and the claimant was paid salary and accrued holiday pay to that date.
29. The claimant was afforded the right of appeal against his dismissal, and he submitted an appeal. Following receipt of this appeal the respondent engaged a consultant to consider and determine his appeal. The consultant was independent of the earlier decision and after a review of the process decided to refuse the claimant's appeal.
30. Meanwhile the other two General Managers had applied for alternative positions. The General Manager of the Abbey Sands Hotel applied for the junior role of Deputy Manager at the Grand Hotel and was successful in that application. In addition, Mr Ghosh applied for the post of Assistant Group Operations Manager and was successful in that application. The claimant now asserts that Mr Ghosh has replaced him at Falmouth because of his earlier protected public interest disclosures, but it is clear from the job description for the post of Assistant Group Operations Manager that it is based at the Grand Hotel in Torquay. The claimant had previously been informed of this vacancy, and invited to apply, but chose not to do so. Given the amount of travelling involved, and the reduced salary of £22,000, the claimant should not be criticised for declining this opportunity, but equally it is not the case that Mr Ghosh had taken a role which replaced the pre-existing General Manager role at Falmouth Hotel.
31. This renewed structure within the respondent's Group remained in place through the winter of 2020 until the second lockdown in January 2021. The respondent was unable to reopen until 17 May 2021. Following a review at that later stage the respondent decided to introduce a new role of Hotel Manager at the Falmouth Hotel with effect from 1 June 2021. This was a more reduced role than the previous General Manager role, not least because of the reduced capacity of that hotel, including the absence of weddings and conferences. This reduced role also came with a lower salary of £38,000 pa. Mr Ghosh applied for that role and was successful. Mr Legendre became General Manager of the Grand Hotel when that role was reintroduced, and the Abbey Sands Hotel was reopened on 28 May 2021 but without a General Manager.
32. The claimant is therefore eventually correct to say that Mr Ghosh replaced him as Manager of the Falmouth Hotel, but this was at the reduced role of Hotel Manager, with reduced responsibilities and a reduced salary, and only with effect from 1 June 2021 some nine months after the claimant's dismissal.
33. Having established the above facts, I now apply the law.
34. The Law:
35. The reason relied upon by the respondent for the claimant's dismissal was redundancy, which is defined in the Employment Rights Act 1996 ("the Act"). The statutory definition of redundancy is at section 139 of the Act. This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) "the fact that the requirements of (the employer's) business for employees to carry out work of a particular kind, or 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"
36. Section 108(1) of the Act provides that the right to complain of unfair dismissal does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

37. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that 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, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
38. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
39. Under section 103A of the Act, an employee is to 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.
40. Under section 47B of the Act, 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.
41. Under section 48(2) of the Act, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
42. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as “s. 207A(2)”) and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 (“the ACAS Code”).
43. I have considered the cases of Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT; Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436; Fecitt and Ors v NHS Manchester [2012] ICR 372 CA; Kuzel v Roche Products Ltd [2008] ICR 799 CA; Blackbay Ventures Limited t/a Chemistree v Gahir UK/EAT/0449/12/JOJ; Royal Mail Group Ltd v Jhuti [2019]UKSC 55; and Eiger Securities LLP v Korshunova [2017] IRLR 115 EAT.
44. In addition, the statutory framework and case law concerning protected disclosures was summarised by HHJ Tayler in Martin v London Borough of Southwark (1) and the Governing Body of Evelina School UKEAT/0239/20/JOJ. He referred to the dicta of HHJ Auerbach in Williams v Michelle Brown AM UKEAT/0044/19/00 at para 9: “it is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.”
45. The Claimant’s Claims:
46. The claimant’s claims were clarified and agreed at a Case Management preliminary hearing and subsequent Case Management Order of Employment Judge Goraj dated 19 July 2021 (“the Order”). The respondent subsequently served Further Information pursuant to the order which conceded that the claimant had made protected public interest disclosures in respect of the first and third disclosures relied upon. The respondent also now concedes that the second and fourth disclosures relied upon amounted to protected public interest disclosures.
47. The Claimant’s Disclosures:
48. The claimant relies on four disclosures as being protected public interest disclosures. The first disclosure is his email to Mr Ketenci dated 21 March 2020. The second disclosure is

- the telephone conversation with Mr Richardson on 21 March 2020. The third disclosure is his email to Mr Richardson on 21 March 2020. The fourth disclosure is another email to Mr Richardson on 22 March 2020.
49. In each of these three emails and the telephone call the claimant disclosed information to the effect that the respondent was failing to comply with a legal obligation, namely to close the hotel bar and restaurant at the Falmouth Hotel because of the Covid-19 pandemic in accordance with Government instructions, and accordingly that the health and safety of individuals was likely to be endangered. The claimant held the belief that making these disclosures was in the public interest because both hotel staff and the public were likely to be affected, and it was reasonable for the claimant to have held that belief. The claimant believed that the disclosure tended to show a breach of a legal obligation and/or that health and safety was endangered as set out in sub sections 43B(1)(b) and (d) of the Act. Given the confusion arising from the immediacy of the Government lockdown and the apparent lack of clarity in the relevant regulations, that belief was reasonably held. These disclosures were made to the claimant's employer which satisfies section 43C(1)(a) of the Act. The respondent concedes that these disclosures were protected public interest disclosures and I agree, and I so find.
50. The Claimant's Detriment Claims:
51. The claimant relies on four detriments said to have been done on the ground that he had made his protected public interest disclosures, and I deal with each of these in turn.
52. The first alleged detriment is that on 25 March 2020 he was removed from his position as General Manager at the Falmouth Hotel. I do not accept that this was factually correct. The claimant was placed on furlough leave on 25 March 2020, and he gave his signed consent for that purpose. The majority of the other staff at the Falmouth Hotel were also placed on furlough leave. Although the Falmouth Hotel remained open it only required a skeleton staff to provide services for the small number of key workers staying at the hotel. There were no General Managers working at any of the respondent's four hotels at this time. The claimant remained in the respondent's employment (albeit on furlough leave) until his redundancy took effect on 31 August 2020. I do not accept that being placed on furlough leave was detrimental treatment given that the claimant gave his signed consent, but even if it were a detriment, this was to seek to ameliorate a financial emergency and was consistent with the way the respondent treated its other members of staff, including the other General Managers. I therefore reject the claimant's assertion that this was a detriment which he suffered on the grounds of having made his protected public interest disclosures.
53. The second alleged detriment is that on 25 March 2020 he was required to sign a pre-typed resignation letter, which he refused to do. There is a conflict in the evidence between the claimant and Mr Ketenci, and for the reasons explained in the findings of fact, I prefer Mr Ketenci's version of events. I find that this alleged detriment, namely that the claimant was required to sign a pre-typed resignation letter, did not happen, and this claim is also rejected.
54. The third alleged detriment is that in July 2020 the respondent refused to allow him to resume his position of General Manager at the Falmouth Hotel and replaced him with Mr Ghosh. I find this allegation is only partly factually correct. It is true that the respondent did not allow the claimant to resume his position as General Manager at the Falmouth Hotel, and to the extent that the claimant asked for this to happen, and he was refused, arguably that amounts to a detriment. However, I reject the other constituent element of the alleged detriment namely the suggestion that he was replaced by Mr Ghosh. For the reasons explained in the findings of fact above, I do not accept that Mr Ghosh replaced the claimant as General Manager at the Falmouth Hotel. In any event, the decisions made by the respondent at that time as to what limited management functions were still required were against the backdrop of the earlier lockdown, very low occupancy, and the various financial difficulties, all of which were clearly caused by the pandemic. The respondent's decisions which were taken in July 2020 and thereafter were in response to these factors, and not in my judgment because the claimant had made protected public interest disclosures some four months earlier. This is consistent with the fact that the General Manager at Abbey

- Sands Hotel was not recalled from furlough either. I also reject this aspect of the claimant's alleged detriment claim.
55. Finally, the fourth alleged detriment is that in August 2020 he was selected for redundancy and dismissed. This is factually correct, and clearly amounts to a detriment. However, the claimant was in a pool for potential selection for redundancy of one person only, being the only General Manager of the Falmouth Hotel. Exactly the same thing happened at the three other hotels in the respondent's Group, in that there was no ongoing requirement for a General Manager at the Royal Beacon Hotel, nor at Abbey Sands Hotel which remained closed, and the vacant position at the Grand Hotel was not filled. The respondent made a business decision against the background of other redundancies generally to remove the line of management which consisted of the four General Managers. In my judgment this revised structure had nothing to do with the claimant's protected disclosures in March 2020 some four to five months earlier, and everything to do with the earlier lockdown, very low occupancy, and the various financial difficulties, all of which were clearly caused by the pandemic.
 56. I can understand the claimant's concern that Mr Ghosh was perceived by both the claimant and some members of his previous team to be the new manager of the Falmouth Hotel. However, he was appointed to the position of Assistant Group Operations Manager, the job description for which role makes it clear that he was based at the Grand Hotel in Torquay. Mr Ghosh was only appointed to that position after the claimant had declined to apply for it. In addition, Mr Ghosh was carrying out duties in a roving capacity in a more junior role at a much lower salary than that previously enjoyed by the claimant. His job description makes it clear that he was based at the Grand Hotel in Torquay, and he had similar less extensive management responsibilities at the other hotels in the Group. He was effectively holding down a more junior position for which the respondent had invited the claimant to apply during the redundancy process. The claimant declined to apply for this position because of the amount of travelling involved which was an understandable personal decision. It is simply not the case that the claimant was removed from his position and replaced by Mr Ghosh because of his protected public interest disclosures which were made some months earlier. It was only after the improved financial position and the further restructuring in 2021 that Mr Ghosh applied for and obtained the post of Hotel Manager at Falmouth. Even then this was not at General Manager level.
 57. In any event during the course of this hearing the claimant accepted that the financial impact on the respondent's business gave rise to a genuine redundancy situation, and that the redundancy of all four General Manager posts (agreed by the elected representatives) was also genuine. This obviously undermines his assertion that he was selected for redundancy because of his earlier disclosures. That only leaves his potential complaint of dismissal, which is dealt with below, and section 47B(2)(b) disapplies the statutory provisions relating to detriment to the extent that it amounts to dismissal.
 58. Applying Fecitt, the question to be asked is the extent to which any decision which gave rise to detriment was "materially influenced" by the claimant's protected disclosures (without the disclosures needing to have been the sole or principal reason for the treatment). I find that this was not the case. In the first case the decisions made about selection and dismissal were made by Mr Legendre, to whom no disclosures were made, and there is no evidence to suggest that his decisions were manufactured or manipulated by any other person. In addition, the respondent's decisions were all in the context of, and pursuant to, the redundancy process which was reasonable and extensive in its scope, and which applied to a number of other members of staff as well as the claimant in times of financial emergency.
 59. Accordingly, I dismiss the claimant's claim for detriment arising from protected public interest disclosures pursuant to section 47B of the Act.
 60. The Claimant's Unfair Dismissal Claim:
 61. The parties agree that the claimant was dismissed on 31 August 2020. The claimant asserts that the reason (or if more than one the principal reason) for his dismissal was because he had made his protected disclosures.

62. I have set out in the findings of fact above the detailed redundancy process which was undertaken by the respondent as a direct response to the significant financial problems which had arisen within the respondent's Group following the Government lockdown which was imposed from 24 March 2020. This is not a claim for "general" unfair dismissal arising from redundancy under sections 98 and 139 of the Act, but even so, it is worth putting on record the following matters. In my judgment it is clear that the requirements of the respondent's business for employees to carry out work of a particular kind, and for employees to carry out work of a particular kind in the place where a number of employees were employed, had ceased or diminished or were expected to cease or diminish. The statutory definition of redundancy was met, and this directly applied to a wide range of the respondent's employees, including the General Manager positions at each of the respondent's four hotels. The respondent then embarked upon a process which involved the election of employee representatives; collective consultation; individual consultation; consideration of suitable alternative employment; and the right of appeal to someone independent of the initial decision. In my judgment this was a fair and reasonable process which would have satisfied the statutory test of fairness under section 98(4) of the Act in any event.
63. Although this is not the test to be applied in this case, it is worth pointing out that it is highly improbable to say the least that the respondent would have manufactured this process in order to dismiss the claimant because he had made protected public interest disclosures, particularly because the respondent's Group was making significant financial losses and was undertaking restructure which was essential for its survival. In addition, during the detailed consultation process, the claimant was invited to apply for a number of alternative positions within the respondent's Group. This clearly undermines the claimant's assertion that the respondent was seeking to manufacture or manipulate his dismissal because he had earlier made protected public interest disclosures.
64. During the course of this hearing the claimant accepted that there was a genuine redundancy situation, and the removal of all four General Manager positions was a genuine decision taken for financial reasons. The claimant's complaint now appears to be that he feels misled that the Group Assistant Operations Manager position was expressed to be based at the Grand Hotel in Torquay when the eventual incumbent Mr Ghosh effectively ended up as the Hotel Manager in the Falmouth Hotel instead of the claimant. In my judgment this argument is flawed for the following reasons. The job description for the Group Assistant Operations Manager (which had been sent to the claimant) makes it clear that it is based at the Grand Hotel in Torquay, which is consistent with all other head office positions. It also attracted a much lower salary of £22,000 pa. The claimant declined to apply for that position as an alternative to his redundancy, despite being encouraged by Mr Legendre to do so. Only subsequently did Mr Ghosh apply for that position and was then appointed. His duties then involved junior managerial responsibilities reporting to the Executive Team at each of the Grand Hotel, the Royal Beacon Hotel, and the Falmouth Hotel. He did not become the Hotel Manager at Falmouth until many months later after a subsequent reorganisation following the second lockdown. Even then it was on a reduced salary compared to the claimant's original salary.
65. In considering Royal Mail Group Ltd v Jhuti, there is no evidence to suggest that the dismissing officer, Mr Legendre, was in any way manipulated or misled to adopt the redundancy process or to make his decision to dismiss the claimant because of any different reason. The decision to dismiss the claimant by reason of redundancy cannot be said to have been an invented reason against this background. I find that the factors which led Mr Legendre to make the decision to dismiss the claimant were entirely those arising from the redundancy process.
66. The test to be applied is whether the reason or principal reason for the claimant's dismissal was the making of his protected public interest disclosures (Eiger Securities LLP v Korshunova). Applying Kuzel v Roche Products Ltd, I am satisfied that the respondent has shown that the reason for the claimant's dismissal was his redundancy. I reject the claimant's assertion that the reason, or if more than one the principal reason, for his dismissal was the fact that he had made protected public interest disclosures.

67. Accordingly, I also dismiss the claimant's unfair dismissal claim under section 103A of the Act.
68. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 6 to 32; a concise identification of the relevant law is at paragraphs 35 to 44; how that law has been applied to those findings in order to decide the issues is at paragraphs 45 to 67.

Employment Judge N J Roper
Dated: 16 November 2021

Judgment & reasons sent to parties: 6 December 2021

FOR THE TRIBUNAL OFFICE