EMPLOYMENT TRIBUNALS

Claimant: **Mr L Laniyan**

Respondent: **Adam Cex Limited**

Heard at: **East London Employment Tribunal**

On: **14 July 2021**

Before: **Employment Judge Russell**
Members: **Ms M Daniels**
Mr M Woods

Representation:
For the Claimant: **Mr S Martins (Consultant), assisted by Ms Matthews**
For the Respondent: **Mr L Davies (Solicitor)**

JUDGMENT

1. **The Claimant did make protected disclosures.**

2. **The claim of detriment because of a protected disclosure fails and is dismissed.**

3. **The claim of automatically unfair dismissal because of a protected disclosure fails and is dismissed.**

REASONS

1. This is a claim brought by the Claimant alleging detriment and/or automatic unfair dismissal by reason of protected disclosures. In the course of submissions, the Claimant withdrew the claims of detriment for failing to be accompanied at a disciplinary hearing and for failure to permit an appeal against dismissal. Furthermore, he confirmed through Mr Martins that his claim regarding dismissal was brought under Section 103A only and not as a Section 47B detriment. The Respondent conceded in submissions that if there was a qualifying disclosure made, then the Claimant had a reasonable belief that it was in the public interest and that the information tended to show a breach of health and safety obligation. No concession was made on whether the information disclosed tended to show breach of a legal obligation point or more generally.

2. The issues to be decided were therefore:

2.1 Did the Claimant disclose the following information on any of the following occasions:

2.1.1 In staff meetings on 3 to 5 occasions in 2019 to both Sharuk Ahmed and Alex Parkes that they were breaching health and safety in the following ways:-

(a) the toilet was broken and leaking water, that it filled the entire toilet area and formed a puddle.

(b) there was a rat carcass underneath the microwave the staff kitchen where food is prepared.

(c) there were numerous trip hazards made unsafe to walk in the kitchen.

(d) there was no light in the kitchen, and it was dark and unfit to use.

2.1.2 On a date to be specified that he raised a complaint on the base of colleagues' safety. The Claimant is to provide details of what he said when he said it and who he said it.

2.2 If so, as well as having a reasonable belief that it was in the public interest and that the information tended to show a breach of health and safety obligation, did the Claimant also reasonably believe that it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation;

2.3 If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

2.4 Did the Respondent subject the Claimant to the following detriments?

2.4.1 fail to follow disciplinary procedure

2.4.2 target the Claimant for no particular reason.

2.5 If so, was it done on the ground that he made a protected disclosure? The Respondent's position is it was unaware of any such protected disclosure and Claimant was dismissed in accordance with the company's usual procedure for an individual who has less than two years' service.

2.6 Was the sole or principal reason for dismissal a protected disclosure? The Respondent's case is that he was dismissed for poor performance.

3. We heard evidence from the Claimant and from Ms Jodie Davies on his behalf. We admitted her witness statement, although it was exchanged late, for reasons that we gave at the time. For the Respondent we heard from Mr Alexander Parkes (former Operations Manager) and Ms Cassie Morgan (Assistant Manager).

4. We were provided with an agreed bundle and we read those pages to which we were taken in the course of evidence.

5. In reaching our findings of facts and our conclusions, we resolved those only those disputes that were necessary.

Findings of Facts

6. The Respondent is a company operating stores under the CEX Franchise, specialising in computing, video and technology items both new and second-hand. The Operations Manager at the material time was Mr Parkes. He was responsible for six stores, including Ilford which had approximately 10 members of staff. The Claimant was employed as a sales Assistant from 4 December 2018. His interview was conducted on the shop floor, rather than in the staff area. This is consistent with the Claimant's case that the staff room was and had for some time been in a significantly poor state and that management were aware of the problems, to the extent that they did not want to give a bad impression to potential new members of staff.

7. The Ilford shop operated from an old building situated next to an alleyway with an historic problem with rodents and rubbish. Photographs of the upstairs staff area taken during the Claimant's employment show serious problems with cleanliness, tidiness and hygiene standards. The photographs of the staff lavatory show leaked water on the floor which had not been mopped up. Other photographs show evidence of the presence of rats. Whilst possibly historic, the Tribunal on balance finds that a rat's tail can be seen in the photographs of the kitchen area. There is a vast amount of mess which we are satisfied posed an obvious tripping hazard, there was inadequate lighting and no apparent source of hot water in the kitchen. The Tribunal finds that the poor conditions were caused by a mixture of poor facilities, which it was the responsibility of the Respondent to remedy, and an evident lack of responsibility taken by employees for simple steps such as putting toilet roll inner tubes into the bin, washing up their cutlery and crockery after lunch and sorting stock appropriately rather than just tipping everything onto the floor.

8. The Claimant was unable to give specific dates for the alleged disclosures relied upon in this case, as set out in the issues listed above. In evidence, he said that he first raised complaints with Mr Nassor in or around January 2019 and repeated them two to four times thereafter to Mr Nassor, Ms Morgan, Mr Ahmed and Mr Parkes; with the last occasion being about a month or so prior to his dismissal. The Claimant says that he disclosed information about the lack of hygiene and unsanitary state of the staff area at monthly staff meetings. These were generally held on the last Sunday of the month subject to rotas, albeit the dates could not be readily ascertained. No notes of the discussions were included in the bundle. Mr Parkes did not routinely attend the monthly staff meetings but would attend if present at Ilford when a meeting was taking place. He did not recall the Claimant disclosing information about the broken lavatory, leak, rat carcass, trip hazards, lack of light or hot water in the kitchen.

9. On balance, the Tribunal accepts the Claimant's evidence that the information set out in the issues about the state of the staff area were raised by him at the staff meetings on between three and five occasions between January 2019 and October 2019. Specifically, he told his managers that the lavatory was broken and leaked, there was a rat carcass, trip hazards, lack of light or hot water in the kitchen and that these were endangering the safety of himself and colleagues at Ilford. The fact that the initial

Particulars of Claim referred only to one disclosure in a staff meeting does not, in the view of the Tribunal, undermine the reliability of the Claimant's evidence at this hearing that the same information was shared on more than one occasion in staff meetings. Repeated disclosure of the same information is consistent with the evidence of Ms Davies, who said that she, the Claimant and another employee had continuously complained about the staff area. It is also consistent with our finding below that Mr Parkes on occasion tidied up and turned off the lavatory valve when there was a leak. It is further consistent with the repeated attendance at the Ilford shop by pest control on four occasions between January and end of October 2019.

10. The Respondent's Health and Safety policy provides that employees should raise health and safety matters with managers. The Tribunal accepts that the Claimant did raise his concerns with his managers at Ilford, specifically Mr Ahmed, Mr Nassor and Ms Morgan, as well as with Mr Parkes. Other employees did likewise. At no stage did the Claimant raise a grievance or put his concerns in writing or threaten to escalate them to more senior managers or an external body, such as the Environmental Health department of the local authority. Instead, he and some colleagues complained verbally and mostly at a local management level about the state of the staff area and the health risk it posed. The Tribunal finds that at the time that he disclosed the information, the Claimant reasonably believed that that state of the staff area and the specific problems identified posed a risk to the health and safety of his colleagues and that it was a breach of the Respondent's obligation to provide a safe place of work and, in particular, a safe and clean kitchen area.

11. Initially, the shop managers (Mr Nassor and then Ms Morgan) made personal efforts to address the underlying and chronic problems, for example Ms Morgan herself cleaned the lavatory even when pregnant. However, we accept the Claimant's evidence that the issues became worse after Mr Ahmed took over management responsibility for the Ilford shop, under the supervision of Mr Parkes as Operations Manager. Mr Parkes had a "hands off" approach to management, largely leaving issues to Mr Ahmed. Whilst Mr Parkes may on occasional visits have attempted some tidying or remedial action, such as turning off the valve of the broken lavatory, the Tribunal find that he failed to address adequately what was clearly a serious and persistent problem with the staff room, kitchen and lavatory. This is consistent with the Claimant's evidence, which we accept, that Mr Parkes' response to staff complaints was simply that they would be moving shop soon.

12. Although Mr Parkes and Mr Ahmed were aware of the chronically poor conditions in the upstairs staff area, neither took effective action either to address the poor conduct of the employees or the inadequate facilities at the shop. Although the problems were chronic and long-term, only short-term action was taken when things were particularly bad. The Respondent did arrange for a plumber and pest control to attend to deal with immediate problems but not to address the underlying concerns. Pest control recommendations on 8 January 2019, repeated on 12 April 2019 and 7 June 2019, were that the toilet area, sink, stairs and parking area should be cleaned. Ms Morgan accepted in evidence that this was not done before her maternity leave which commenced in or around June 2019. The failure to undertake the deep clean recommended is consistent with the findings in the further pest control report dated 1 November 2019. The Tribunal finds that the cleanliness, safety and hygiene problems with the upstairs staff area had not been resolved by the end of the Claimant's employment.

13. On balance, the Tribunal finds that management did not take seriously the employee complaints and largely considered the employees themselves responsible for the mess. The complaints from staff were largely ignored unless there was a particularly significant issue, such as the broken lavatory or the rat carcass. It was not a significant issue for them and there is no evidence to support the Claimant's evidence that managers did not like outspokenness about the working environment. Indeed, Ms Davies and other employees complained and were not subjected to any detriment for doing so. As Ms Davies said in evidence, "**I am not saying that they were doing it deliberately it simply felt like none of our voices were heard and our health was at risk. It is all well and good to pay for repairs, but it should have been done a lot sooner not months and months down the line**".

14. The Claimant's contract of employment provided for a three-month probationary period. There is no evidence that the Claimant failed the probationary period or had it extended. The employment contract and handbook also provide that where an employee has less than two years' service, the disciplinary procedure will not be followed prior to termination.

15. Until her departure on maternity leave in mid-June 2019, the Claimant was supervised and managed by Ms Morgan. The Tribunal considered Ms Morgan to be a credible and reliable witness and we find that from early in the Claimant's employment there were concerns about mistakes which he made. These were raised with him at the time by way of informal feedback. Nevertheless, the mistakes would happen again.

16. Initially in cross-examination, the Claimant said that he did not find out about the till errors until three months after his dismissal. However, he subsequently accepted that till mistakes would be brought to his attention at the end of the working day. There is a list of till discrepancies in the bundle. The Claimant's case is that not all were his responsibility and were not a genuine cause for concern. He cited three reasons: firstly, as his name was not on the till closure printout, secondly that they were caused by a colleague not him (particularly towards the end of the employment) and thirdly, that they were no worse than discrepancies for other members of staff.

17. Mr Parkes' evidence was that he was aware at the time of the discrepancies and that they were on the Claimant's till as he was required to authorise closure of a till with a discrepancy. He said that losses on other employee tills would be plus or minus a couple of pounds whilst the Claimant's discrepancies were larger and often round numbers. The till discrepancies for the Claimant was so significant, both in terms of frequency and amount, that the Respondent's Loss Prevention team began two investigations. Ms Morgan said that some of the Claimant's till discrepancies were quite unusual by comparison to other staff. On balance, the Tribunal prefers the evidence of the Respondent and finds that the Claimant's till discrepancies were materially more frequent and for higher amounts than other employees, in particular from September 2019. The Claimant was aware of the errors and that they were causing concern to the Respondent. There is no evidence that they were caused by colleagues and Mr Parkes genuinely believed that the Claimant was responsible for them.

18. The employment contract allows the Respondent to make deductions from salary where losses are incurred due to negligence or poor performance by an employee. This would include till discrepancies. No deductions were ever made from the Claimant's pay. Mr Parkes' evidence was that the Respondent never made deductions for errors as staff were low paid and he wanted to incentivise improvement not to punish errors. The

Tribunal accepts this as reliable evidence although deductions from pay may have sent the Claimant a strong message that his till losses were unacceptable and resulted in an improvement which was not evident after informal chats.

19. In addition to the till discrepancies, Mr Parkes' evidence was that there were concerns about the Claimant's lateness, misfiling of stock and failure to put out stock around his till and that he had informed Mr Ahmed to discuss concerns informally with the Claimant whenever they occurred. There is no documented record of any of failures by the Claimant or informal discussions with managers about his conduct and performance. In cross-examination, the Claimant said that he was never spoken to by Mr Ahmed about any of these issues. However, his evidence is undermined by the fact that he also maintained that from about April/May 2019, Ms Morgan and Mr Ahmed had targeted him and criticised him in front of colleagues about stock around his till not being put out, lateness and inappropriate uniform.

20. The Tribunal found Ms Morgan's evidence to be straightforward and honest when she told us that the Claimant was excellent with customer service but that there were issues with his efficiency and the mistakes that he made. She candidly accepted that there were problems with lateness with two other members of staff, Sharukh and Anthony. The shop manager at the time spoke to Sharukh (as he and Ms Morgan were both supervisors) but we accept her evidence that she had informal discussions about lateness with Anthony in the same way that she did the Claimant.

21. On balance, the Tribunal finds that the Claimant was spoken to contemporaneously about errors as they arose. We do not accept the Claimant's case that he was being targeted. Whilst other employees were not dismissed, issues were raised with them as they were with the Claimant.

22. When Mr Ahmed returned to Ilford from annual leave in mid-October 2019, he telephoned Mr Parkes and informed him that the Claimant had not improved, was still making mistakes and that his till discrepancies were getting worse. Mr Ahmed was particularly unhappy that the area around the Claimant's till was a mess: items which the Claimant had bought from customers had been left around the till despite having previously been told that this was not acceptable. Mr Ahmed told Mr Parkes that he wanted to dismiss the Claimant as he was constantly making mistakes and not showing any signs of improvement. The Tribunal did not hear evidence directly from Mr Ahmed. He is no longer employed by the Respondent, having left whilst Ms Morgan was on maternity leave between June 2019 and March 2020, and the Respondent does not know where he is. As there is a good reason why he has not been called as a witness, the Tribunal draws no adverse inference from his absence. The Tribunal accepts Mr Parkes' evidence that this was the contemporaneous reason for dismissal given to him by Mr Ahmed and that at no stage in the conversation did Mr Ahmed or Mr Parkes discuss the state of the staff area or the Claimant's complaints.

23. Having heard Mr Ahmed's complaints, Mr Parkes agreed that the Claimant should be dismissed for poor performance; the issue for him was the Claimant's attitude and that the Respondent was wasting time trying to improve him when it could be training other people. There was no discussion about warnings, a procedure to follow or alternatives to dismissal. The Tribunal infer that Mr Parkes and Mr Ahmed had concluded that they had tried their best informally to help the Claimant but that his lack of improvement to date and attitude was such that further warnings were not likely to improve his performance.

Moreover, they did not believe that a disciplinary procedure was required because the Claimant had less than two years' service.

24. On or around 19 October 2019, following his conversation with Mr Parkes, Mr Ahmed telephoned the Claimant and asked him to attend the Ilford shop. The Claimant was on sick leave at the time but attended as requested. This was not an invitation to a disciplinary hearing and the Claimant was not informed that his employment might be terminated.

25. The Respondent's case is that Mr Ahmed told the Claimant he was being dismissed for poor performance, till discrepancies and errors. The Tribunal did not have the benefit of hearing evidence from Mr Ahmed and Mr Parkes was not present when the Claimant was told that he was dismissed. The Claimant's case is that he was told that he was not able to come back and was not given any reason for dismissal. The Claimant asked us to infer from this, that the true reason for dismissal was his protected disclosures – if the real reason was conduct or performance he would have been told at the time.

26. In resolving this dispute the Tribunal had regard to the limited contemporaneous documentary evidence available. There was no dismissal letter, even by email or WhatsApp message. Ms Davies' evidence was that, at the time, the Claimant had told her that he considered his dismissal unfair because he had not received three warnings before dismissal. He did not tell Ms Davies that he believed it was because of a protected disclosure or his complaints about the staff area. On 22 November 2019, the Claimant sent an email to Mr Parkes alleging that he had been sacked for no reason other than Mr Parkes did not like him; again he made no contemporaneous reference to a protected disclosure or his complaints about the staff area. Mr Parkes replied the same day to say that his employment had been "**terminated on enough merit**", as Mr Parkes put it, and not because he did not like him. Also on 22 November 2019 the Claimant sent an email to an employee in the internal Loss Prevention team stating: "**I know you guys sacked me due to false assumptions of stealing**".

27. On balance, the Tribunal finds that Mr Ahmed did not make clear to the Claimant the reason why he was being dismissed. This is consistent with the Claimant's uncertainty as expressed in contemporaneous emails and messages (either because Mr Parkes did not like him or because he was suspected of theft). However, it is clear that the Claimant did not think that his dismissal was due to complaints about the staff area and that the perceived unfairness was the failure to follow a proper procedure and give him formal warnings. From this the Tribunal infers that the reason given to the Claimant by Mr Ahmed was sufficient to convey that it was a performance or conduct issue, albeit not clearly the particular matters of conduct or poor performance relied upon.

Law

28. A qualifying disclosure requires a 'disclosure of information' which in the reasonable belief of the worker tends to show, amongst other things, that the health or safety of any individual has been, is being, or is likely to be endangered, s.43B(1)(d) Employment Rights Act 1996.

29. In **Williams v Michelle Brown AM** UKEAT/0044/19/OO: HHJ Auerbach set out a five stage approach: (1) there must be a disclosure of information; (2) the worker must believe that the disclosure is made in the public interest; (3) such a belief must be

reasonably held; (4) the worker must believe that the disclosure tends to show one of the matters listed in s.43(B)(1) (a) to (f); and (5) such belief must be reasonably held.

30. The ordinary meaning of 'giving information' is conveying facts and not simply making allegations, **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38, EAT at paragraph 24. A disclosure can include a failure to act as well as a positive act, **Millbank Financial Services Ltd v Crawford** [2014] IRLR 18.

31. The obligation breached need not be in strict legal language and there is no need to specify the precise legal basis of the wrongdoing asserted, **Twist DX v Armes** UKEAT/0030/20/JOJ.

32. The requirement for reasonable belief, which should not be conflated with good faith which is addressed below, involves an objective standard by reference to the circumstances of the discloser, including their qualifications, knowledge of the workplace and experience, **Koreshi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4, EAT.

33. In **Blackbay Ventures Ltd v Gahir** [2014] IRLR 416, the EAT gave helpful guidance as to the approach to be adopted by a Tribunal considering a protected disclosure claim. This emphasised the need not to adopt a rolled up approach but to consider each disclosure by date and content, identify the risk to health and safety in each case and the detriment (if any) which is caused thereby.

34. A worker has the right not to be subjected to detriment because of a protected disclosure, s.47B Employment Rights Act 1996. In a detriment case, the protected disclosure need only be *a* material cause of the Respondent's reasons for its conduct.

35. A dismissal of an employee by reason of a protected disclosure is automatically unfair. In an unfair dismissal case, the protected disclosure must be the sole or principal reason (and not merely a material cause).

36. Unless the Claimant lacks the necessary qualifying service (and therefore bears the burden of proving that the Tribunal has jurisdiction to hear the claim), the burden of proving the reason remains on the employer. If the Claimant positively asserts that there was an inadmissible reason for his dismissal, such as making protected disclosures, he must produce some evidence supporting that case, **Kuzel v Roche Products Limited** [2008] EWCA Civ 380.

Conclusions

37. Based upon our findings of fact, we are satisfied that the Claimant made disclosures of information as set out in paragraph 2.1.1 of the issues set out at the beginning of these Reasons. Although the Claimant has not been able to give specific dates or the specific words used for what were throughout oral disclosures, he did tell Mr Ahmed and Mr Parkes that the toilet was broken and leaking, that there was a rat carcass in the kitchen, that there were numerous trip hazards in the kitchen, no light in the kitchen and that it was unfit for use. He also stated that these matters were endangering the safety of himself and colleagues at Ilford.

38. The Tribunal has further found as a fact that at the time that he disclosed the information, the Claimant reasonably believed that the state of the staff area and the specific problems identified posed a risk to the health and safety of his colleagues and that it was a breach of the Respondent's obligation to provide a safe place of work and, in particular, a safe and clean kitchen area. Whilst the staff area and kitchen were not used by members of the public, they were used by a number of employees and stored stock which would subsequently be put on the shop floor for sale. In all of the circumstances, the Tribunal concludes that the Claimant also reasonably believed that his disclosures were in the public interest. Each of the qualifying disclosures in paragraph 2.1.1 was also a protected disclosure as it was made to his employer.

Detriment

39. It is not in dispute that the Claimant was dismissed without any disciplinary procedure having been followed. A dismissal without proper procedure is something about which an objectively reasonable employee would clearly feel aggrieved as it deprives them of the opportunity to address particular causes of concern and thereby avoid dismissal and loss of livelihood. The purely informal approach adopted by the Respondent meant that whilst the Claimant had some knowledge of mistakes as he went along, there was nothing to suggest to him that his employment may be at risk. The failure to follow a formal procedure was a detriment.

40. The real dispute is whether or not the Claimant's protected disclosures were a material cause of the decision to dismiss without a procedure. The Tribunal takes into account that the Claimant had less than two years' service and that the contract of employment and handbook expressly provide where an employee has less than two years' service, the disciplinary procedure will not be followed prior to termination. There was no evidence before the Tribunal to suggest that it had not been applied to all employees with less than two years' service or that it was applied only where protected disclosures had been made. Nor was the Respondent under any legal obligation to follow a formal procedure for an employee with less than two years' service. Whilst the Claimant had repeatedly disclosed information which we have found to amount to protected disclosures, we conclude that Mr Ahmed and Mr Parkes (indeed, Mr Nassor and Ms Morgan too) did not particularly care about them. Similar complaints were raised by Ms Davies who was not subjected to any detriment. If anything, the Respondent cared too little about the information showing the parlous state of the staff area and largely ignored it unless a specific issue required immediate attention. For these reasons we conclude that none of the protected disclosures was in any sense at all a material cause of the decision to dismiss without following a disciplinary procedure.

41. As for targeting, this is a somewhat nebulous term but the Tribunal understands it to mean that the Claimant was unfairly singled out for criticism of his conduct and performance where colleagues acting (or failing to act) in the same way, were not. For the reasons that we have set out above, the Tribunal has not found as a fact that the Claimant was targeted as he alleges. Concerns raised with the Claimant about timekeeping were also raised with other employees, such as Anthony and Sharukh. Mr Parkes instructed Mr Ahmed to discuss with the Claimant concerns about lateness, misfiling stock, stock around the till and till discrepancies were brought to the Claimant's attention at the time that they occurred. The Respondent had reasonable and proper cause to raise all such issues with the Claimant and the intention was to help him to improve. There was no unfair targeting. Indeed, the Claimant's case is fundamentally undermined by the

inconsistency of arguing simultaneously that he was never told about problems with his performance or conduct and also that he was unfairly targeted for the same. Even in the absence of proper records of the matters discussed, the Tribunal has found that there were issues with the Claimant's efficiency and that he made mistakes which Ms Morgan discussed with him. A reasonable employee could not have a justified sense of grievance in these circumstances and we conclude that the Claimant was not subjected to the detriment identified in paragraph 2.4.2.

Dismissal

42. In his submissions, Mr Martins asked us to find that Mr Ahmed and Mr Parkes were the decision makers (relying on **Jhuti**, with Mr Ahmed improperly initiating dismissal by Mr Parkes). He submitted that the lack of evidence to support the stated reason of poor performance, the lack of prior warning, the lack of training, the failure by Mr Parkes to investigate whether Mr Ahmed was relaying accurate information and the failure clearly to state the conduct leading to dismissal at the time are all matters from which the Tribunal can, and should, infer that the real reason for dismissal was the protected disclosures. The Tribunal does not accept that this is a safe or necessary inference to draw.

43. There is evidence of long-standing concerns about the Claimant's performance, in particular till discrepancies, stock control and time-keeping. These were discussed with the Claimant at the time. The evidence of Ms Morgan was particularly strong and credible on this point. The reason given by Mr Ahmed to Mr Parkes in their telephone conversation was a failure by the Claimant to improve: he was still making mistakes, there were increasing numbers and amounts of till discrepancies, the area around his till was a mess. Mr Parkes agreed that the Claimant had not improved despite efforts to date and he had concerns about the Claimant's attitude. At no stage in the conversation did Mr Ahmed or Mr Parkes discuss the state of the staff area or the Claimant's complaints. The Tribunal concludes that this was because the protected disclosures were simply not in their minds when deciding to dismiss the Claimant.

44. For reasons set out above, the failure to follow a disciplinary procedure was in no sense whatsoever due to any of the protected disclosures but was because the Claimant had less than two years' service. Whilst the specific elements of poor performance were not clearly stated by Mr Ahmed when he dismissed the Claimant, his contemporaneous discussion with Ms Davies referring to an absence of prior warnings and his email to the Loss Prevention team about suspected theft, make clear that the Claimant did know that his dismissal was because of his conduct or performance.

45. The Tribunal had particular regard to the Claimant's case that he had been making constant complaints throughout his employment to all managers and that no action was taken to remedy the same. Throughout the period of the disclosures, from January to October 2019, the Respondent did not act on the complaints but nor is there any evidence that it was concerned about the matters raised or that it regarded the Claimant unfavourably as a result. There was no change in the content or manner of the protected disclosures, nor was there any move by the Claimant to escalate his complaints more formally or externally. The Claimant was not the only employee disclosing the same information and there was no evidence that any of his colleagues was subjected to detriment or dismissed. As we concluded when considering detriment, the Respondent cared too little rather than too much about the information showing the parlous state of the staff area and largely ignored it unless a specific issue required immediate attention.

46. What had changed prior to dismissal was that from September 2019, the Claimant's till discrepancies had become materially more frequent and for higher amounts. Mr Ahmed had returned from his holiday and was particularly unhappy about the state of the Claimant's till area. The Claimant's mistakes and lack of improvement were the triggers for the dismissal on or around 19 October 2019.

47. The Tribunal has no doubt that this would have been an unfair dismissal if the Claimant had two years' service and we can understand the Claimant's genuine upset at being dismissed without prior formal warning. In reaching our conclusions, the Tribunal remarked upon the Respondent's poor record-keeping and management practices – it is rare indeed to have a case where the reason for dismissal is not set out in writing, where the precise date of dismissal seems unclear to both parties and where there is such a lack of contemporaneous written record of an employee's underperformance and action to address the same. It may be that the Respondent strives to operate on an informal and family-type approach, as Mr Parkes suggested, however, in doing so it leaves itself open to criticisms raised by the Claimant in this case. Nevertheless, on the oral evidence before us (and in particular that of Ms Davies and Ms Morgan) we have been able to resolve the disputes which would otherwise have been the Claimant's word against that of Mr Parkes. The evidence of Mr Parkes was substantiated by Ms Morgan (and Ms Davies to some extent) and the record of the till discrepancies and the increasing till errors from September 2019 which Mr Parkes genuinely believed were attributable to the Claimant, are all consistent with our conclusion that protected disclosures were not the principal or sole reason for dismissal.

Employment Judge Russell
Dated: 17 December 2021