



EMPLOYMENT TRIBUNALS

Claimant

Mr Sameh Mahran

v

Respondent

Hayes Gate House Limited

Heard at: Bury St Edmunds (by CVP)

On: 7 February 2022

Before: Employment Judge R Wood

Appearances

For the Claimant: In person but assisted by Miss S Rasheva (his partner).

For the Respondent: Miss R Page, from Law at Work.

RESERVED JUDGMENT

The Claimant was fairly dismissed on the grounds of redundancy.

RESERVED REASONS

Claims and Issues

1. The Claimant alleges that he was unfairly dismissed. He disputes that the reason given, namely redundancy, was the genuine reason for his dismissal. The justification given, namely 'Covid' was not the genuine reason. Instead, he asserts that he was pushed out by the Respondent on the pretence that there was a redundancy situation and/or that he had been dismissed for such a reason. He points towards the fact that he had a difficult working relationship with his general manager, and that he had raised issues as to working practices within the business. The Claimant states that this was the real motivation for the dismissal. It is further alleged that the procedure adopted by the Respondent was unfair, In particular, he suggests that the business justification for his dismissal was never properly explained to him. He stated that he was dismissed because he was seen as resistant and an impediment to the Respondent's agenda of overworking their staff and subjecting employees to inappropriate behaviour.

2. On behalf of the Respondent, Miss Page argued that it was a genuine redundancy situation, made necessary by the impact of the pandemic on the Respondent's business. It had responded by looking to make savings, and that one of the aspects of this part of the proposal was to outsource most of the functions of the finance department, thereby rendering the Claimant's role as finance manager redundant. It was submitted that the other issues that the Claimant had raised were irrelevant to the redundancy process. The Respondent also argued that it had adopted a fair procedure.

Procedure, Documents and Evidence Heard

3. The Hearing took place on 7 February 2022. On behalf of the Respondent, I heard evidence from Mr Georges Moura (General Manager at Hyatt Hayes Hotel), Miss Aditi Raikar (Human Resources Officer for the Respondent), and Mr Douglas McAllister (Human Resources Business Partner of Interstate Hotels UK Limited). I also heard from the Claimant, Mr Samah Mahran. I had a bundle of documents which comprises 451 pages, and copies of witness statements for the aforesaid witnesses. Miss Page indicated that the bundle was agreed up to page 271. Thereafter, the documents had been included at the Claimant's insistence, and she did not think they were relevant. However, they had been included anyway. As directed at the conclusion of the hearing, I also received copies of the parties written submissions.
4. At the outset of the hearing, Miss Rasheva indicated that the Claimant still wished to argue that he was dismissed by reason of a 'whistleblowing' related issues, as Miss Rasheva put it. She listed a number of different issues which she said had been raised with the Respondent by the Claimant. However, she accepted that she had not responded to the Tribunal's correspondence to the parties dated 12 June 2021 in which it had indicated that the claim was not being treated as one involving public interest disclosures. Miss Page said she had consequently not prepared the case on the basis of public interest disclosure related detriment. It was agreed by the parties that whilst the grievances raised by the Claimant may be relevant to the reason for the dismissal, that this was not a 'whistleblowing' case in the sense that disclosures were not made in the public interest (amongst other issues).
5. What appears below is a summary of the evidence. I have chosen to focus on the key aspects of the testimony so far as my relevant findings of fact are concerned.
6. I first heard evidence from Mr Moura. He adopted the contents of his witness statement and confirmed that they were true. He was the general manager at the Hyatt Hayes Hotel, and had been the Claimant's line manager. He suggested that he had a good working relationship with the Claimant. On 4 August 2020, the hotel owners decided to move it into the portfolio of another management company, namely Interstate Hotels and Resorts Limited. He explained that the transition gave them access to additional support for key management functions, including finance.

7. Due to the pandemic, the hotel was closed from 1 April to 4 July 2020. He suggested that during this time, the business was losing around £65-70K per month. The Claimant continued to work whilst many other staff were furloughed. Even when the hotel re-opened, they were operating at reduced capacity due to restrictions. This caused them to look at the support provided by Interstate, in relation to the duties carried out by the Claimant, amongst other departments. He started to work on the business case for restructure in September 2020. The document he put together appears at pages 54-60 of the bundle. It was being predicted that normal levels of business would not resume until around 2022. A number of roles at risk of redundancy were identified. Roles within the purchasing team and finance team were placed at risk as they could now be performed by Interstate. It was also proposed that roles in the banqueting suite would be made redundant. The accounting clerk was also placed at risk. The employee in the full time role moved to the part time role, as a result of the process.
8. There was an initial general meeting for staff on 9 October 2020 [62]. There was then a 'one to one' meeting with the Claimant on 15 October 2020. Mr Moura explained that he ran through a slide presentation which set out the business case for redundancies. It was explained to the Claimant that his role in particular was at risk because of the financial support available from Interstate. The Claimant appeared aggressive and mentioned that he had previously been promised a promotion by Matt Stone. He was told that there would be a part time finance assistant post available but he made it clear that he was not interested in it. The Claimant was notified of vacancies with the broader Interstate Group.
9. Mr Moura stated that the Claimant began to raise other issues, namely that he had been mistreated and was unhappy at work. He suggested that these matters had not been raised with him prior to the consultation process.
10. The Claimant attended a second consultation meeting on 6 November 2020 [440]. During the meeting, the Claimant suggested two alternatives to making his post redundant. Firstly, suggesting he take a 10% cut in wages. Further, he requested that he be furloughed under the government's scheme. Mr Moura responded to this in writing on 11 November 2020 [98]. He concluded that neither was as cost effective as the Respondent's proposal.
11. The Claimant attended a final meeting on 24 November 2020 [121]. At the end of the meeting, he was informed that the role was to be made redundant and that this was to be his final day at work. He was notified of this decision in writing by letter dated 26 November 2020 [128].
12. Mr Moura answer questions at the hearing on 7 February 2022. He had left the hotel in August 2021. At that stage, the finance department had comprised a part time finance assistant. Other functions were performed by the central finance office in Glasgow. He stated that the business case appearing at page 53 was put to the Claimant at the first consultation

meeting. In 2020, the business lost £411, 000, which was slightly better than the forecast.

13. The Respondent paid Interstate £1500 per month for the finance support. The part time finance assistant salary was £11,000 p.a. The purchasing clerk, Mr Haroon, had resigned in August/Beginning of September 2020. He earned around £21,000 gross p.a.. Mr Mahran had been on £47,500 gross p.a.. There was also a full time finance assistant eating £21,000. Therefore, the pre-redundancy wages figure was £68,500 p.a.. Post-redundancy, the cost of providing the finance function of the business was £29,000 p.a.. The basic saving as a result of the restructuring of the finance department was therefore in the region of £39,500 per year.
14. Mr Moura explained that the document at page 61 was intended to compare the various proposed structures and associated costs savings. This table had been shown to the Claimant at the final meeting. The Claimant had not asked about the figures associated with the new structure model i.e. costing £28,633. Mr Moura said he didn't explain it any further. The middle model was based on a 10% reduction in the Claimant's wages.
15. Mr Moura said that the Claimant was not on a 9-5 contract. He was expected to respond to the needs of the business. He expected the Claimant to organise his own team and that most managers tended to arrange cover. He stated that the Claimant had not offered a 20% reduction in his wages at the second or third meeting. He explained that he thought the sales and revenue functions were very different and could not readily be centralised. The sales team has been reduced from 3 to 2 people as a result of the redundancy process. The person made redundant had taken the Galley host role. It was a reception position. There was also a breakfast chef made redundant. In addition, 3 kitchen porters went from full time to part time in the restructuring.
16. I the heard from Miss Raiker. She adopted the content of her witness statement and confirmed that the contents were true. In August 2020, she was approached by the Claimant about issues he was having with his team. He stated that he could not rely on them and was unable to take holidays. She responded and copied Mr Moura into the correspondence. As far as she was concerned, the matter was fully resolved and no further action was required. She never received a formal grievance from the Claimant until the one which was dealt with by Interstate, during the consultation process.
17. During the consultation meetings, she confirmed that she took notes. At the first meeting, she recalled that the Claimant seemed aggressive and hit his hands on the table. At the end of the meeting, the Claimant refused to sign the notes, stating that he wished to seek the advice of a lawyer first.
18. At the second meeting on 6 November 2020, the Claimant stated that he was unhappy with the notes of the first meeting, and asked for the meeting to be recorded. This request was refused. Miss Raikar emailed the notes of the second meeting to the Claimant on 11 November 2020. On

13 November 2020, the Claimant raised issues with the notes of both meetings, suggesting that they were not an accurate representation of what was discussed [107].

19. She denied that the Claimant had been deliberately excluded from 'Fourth', the Respondent's HR database. The final consultation meeting was on 24 November 2020, when the Claimant was made redundant.
20. Miss Raikar also answered questions at the hearing. She said she had not seen the email at page 194 prior to seeing it in the bundle. She thought the issue should be mentioned to Mr Moura, as it seemed to be a complaint about the Claimant's team, and he might need support from his manager. The Claimant had been given a chance to amend the notes of the meetings later, and had not done so.
21. I then heard from Mr McAllister who relied on his witness statement and confirmed the contents were true. He stated that most of the hotels within the Interstate portfolio were conducting redundancy consultation at about the same time as the Respondent in 2020 due to the impact of the pandemic on the hotel industry. The overall loss of staff was about 25%.
22. He was asked to conduct the appeal process for the Claimant, who had commenced a grievance which was being dealt with by one of Mr McAllister's colleagues. He decided that the issues raised in the process were unrelated to the redundancy. In any event, it had been found that there was insufficient evidence to substantiate the grievance. As such, he thought the most appropriate approach was to keep the processes separate. He received minutes of consultation meetings, and correspondence, from Miss Raikar. He also emailed Mr Moura to ask him for comment in specific points raised by the Claimant [136-140] and [156-158]. He met with the Claimant on 14 January 2021.
23. On 3 February 2021, he wrote to the Claimant refusing his appeal [160]. Overall, he had concluded that some aspects of the process could have been improved upon. However, he took the view that these flaws did not impact upon the fairness of the decision to dismiss the Claimant.
24. At the hearing, Mr McAllister answered questions. He was asked why the Claimant had been trained a few months prior to the consultation process. He stated that he thought it suggested that there was no firm plan to centralise the finance department at the stage. He went on to explain that the overriding position was that the business took a commercial decision to move finance into the centre. He went on to state that whilst there were issues with the notes and the way the process was explained, as well as the benefits, he found that it was a genuine process. He felt that it was not a foregone conclusion. It was his view that that there was a good business case but that it could have been explained better.

25. The Claimant then gave evidence and relied upon his statement which he confirmed was true. He had started working for the Respondent on 24 November 2017. Mr Moura had started work at the hotel as general manager in June 2019. This was when his “unbearable problems” had begun. He raised issues regarding taking days in lieu of overtime; being asked to do jobs outside of his job description; being asked to work whilst on leave or sick; the department being understaffed and overworked. The Claimant also suggested that the factors were associated with intimidation and bullying from Mr Moura.
26. Some of the staff were asked to work one unpaid day a week in response to the Covid situation. The Claimant was amongst this group. He described this as a “slavery system” paragraph 25. The Claimant has wanted to take the days in lieu when possible. He states that he was labelled a difficult person as a result. In the summer of 2020, when it became apparent that Interstate were to take over the running of the hotel, Matt Stone indicated that the Claimant would be promoted. In September 2020, he was told that there would be redundancies but that he was not one of them. He was told to take £20K out of his budget for the following year.
27. In October 2020, he learned that he was at risk. It was his view that they did not want him in the company and had found the ideal reason to get rid of him, namely prolonged Covid. He took some sick leave in October 2020, the result of unresolved hand issues, and stress. He was concerned to find that colleagues appeared to be aware of the nature of his illness. He suspected that HR had shared photographs of his hand. He also raised concerns that a husband of a member of HR answered his WhatsApp messages, which the Claimant felt was a breach of confidentiality.
28. The Claimant felt that as a key worker, he should not have been selected. He also suggested that the basis for his selection as ‘at risk’ was never explained. He felt that during the process, his ongoing health problems were not taken seriously. He also expressed the view that it was unfair to insist that there be two separate processes; one for the redundancy, and another for his grievances.
29. The Claimant was also asked questions at the hearing. He was asked when he had first been shown the proposed structure, and in particular pages 55 and 57 of the bundle. He said he had not seen those pages until he had received the hearing bundle a few weeks ago. He then clarified and said he had seen page 54 during the first consultation meeting, but nothing else. He again said he was not shown pages 53-60. He then accepted that he had been shown a slide on 9 October 2020, which they had shown to everyone. He then agreed that he had been shown the slides, the general figures but not those relating specifically to his department.
30. He said he had not got the opportunity to amend the notes of the first or second consultation. He would have forgotten many points. He took the view there was no point in co-operating. The redundancy was already happening. It was a tick box exercise. As for the external jobs with other

hotels, the Claimant suggested that the Respondent should have done more. They could have put his CV before the potential employer and helped him to get an interview. He had asked Mr Moura to do this, but he had said he could not because they were external positions.

31. The Claimant accepted that he had been considered for alternative posts but that it was insulting. He accepted that he had been offered the part time finance assistant role, and that the entry an email at page 104 of the bundle which suggested otherwise was probable a typographical error. He accepted he had been selected in a pool of 2 people and he had been told that the finance department was to be centralised.
32. The Claimant maintained that page 61 of the bundle had not been shown to him. He had asked how much the restructure would save, and he had been told it was confidential. The Claimant told me at the hearing that he would have been prepared to consider a 50% reduction in his wages if it would have avoided redundancy. He agreed that the meetings had been rescheduled to accommodate his availability.
33. I then directed that the parties submit written submissions. Both Miss Page and Miss Rasheva complied with my direction. I have considered the contents of each of the submissions very carefully. I do not repeat them herein. They were very helpful.
34. At the conclusion of the Hearing, I reserved my decision.

Legal Framework

35. Section 98 of the Employment Rights Act 1996 (“ERA 1996”) is the statutory basis for unfair dismissal and reads as follows,

“General

- (1) In determining for the purpose of this part whether the dismissal of an employee is fair or unfair it is for the employer to show–
 - (a) the reason (or if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it-
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed to do,
 - (b) relates to the conduct of the employee,
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his

part or on that of his employer) of a duty or restriction imposed by or under an enactment.

.....”

A redundancy is defined in section 139(1) ERA 1996:

“For the purposes of this act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-

- (a) the fact that the employer has ceased or intends to cease –
 - (i) to carry on 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 the 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 a place where the employee was employed by the employer

have ceased or diminished or are expected to cease or diminish.”

36. In broad terms, there are three main questions to be addressed in this type of claim:
- (i) Redundancy having been identified as the reason for dismissal, did a genuine redundancy situation arise?
 - (ii) Was the Claimant dismissed because of the redundancy situation?
 - (iii) Did the employer act reasonably in the circumstances?
37. The Tribunal is required to consider the questions of selection, consultation, and alternative employment in any redundancy dismissal case (Langston v Cranfield University [1998] IRLR 172). The standards of behaviour for an employer undertaking a redundancy procedure are set out in Williams v Compare Maxam Limited [1982] IRLR 83. These include giving employees as much warning as possible of redundancies; consulting with unions to determine selection criteria; developing objective selection criteria; ensuring the fair application of any criteria; and considering whether any alternative offers of work could be made.
38. Selection can take the form of both employees being scored or applying for new roles (Morgan v The Welsh Rugby Union [UKEAT/0314/10/LA]).

Findings and Reasons

39. In arriving at my findings of fact and reasons in this case, I have been careful to consider all matters in the round, rather than to look at any one issue in isolation of others. I have approached my decision by reference to the three questions I posed above.

(i) *Did a genuine Redundancy situation arise?*

40. In the context of this case, it is for the Respondent to prove that there was a fair dismissal of Mr Mahran on the grounds of redundancy. It must do so on a balance of probabilities.

41. I find that there was a redundancy situation. On this point, I accepted the evidence of the Respondent's witnesses, supported as it was by other evidence. I was satisfied that the pandemic had resulted in a dramatic impact on the turnover and profit of the hotel. It may be possible to argue as to the precise effect. I note that the forecasts were not always quite as bad as to the actual performance of the business. However, I accept that the Respondent lost £411,000 in 2020. I also accept Mr McAllister's evidence that the hotels under the Interstate 'umbrella' had all been experiencing similar conditions and that most were engaging in redundancies. He told me that overall the head count had reduced by about 25% within the companies in the Interstate portfolio. From the outside looking in, it is not difficult to imagine how the closure of hotels, and the suspension of leisure travel and corporate activities, would have reduced the income of most hotels very significantly.

42. It is against this background that the Respondent states that it sought to save costs. I accept that this was the underlying cause of the changes that were implemented by the Respondent in 2020. I also find that one of the ways that it decided that costs could be cut was to take advantage of the financial support that Interstate offered to its portfolio hotels. The Respondent has been purchased by Interstate in the summer of 2020. Although I did not see the management contract, I was satisfied, on the basis of what I was told by the Respondent's witnesses, that this was a management service available to the Respondent. I find that the effect of transferring the finance department to the central office in Glasgow would, in large part, extinguish the need to have the Claimant carry out his duties at the hotel.

43. Having examined the documentation in the bundle, it is clear to me that this was the plan, and the reason why the consultation process was initiated. The proposed restructuring of the finance department is set out in the clearest terms at pages 56-57, amongst others. The Claimant eventually conceded that he had seen these slides at the first consultation. They are clearly referred to throughout the consultation meetings and the associated correspondence. There is an additional issue regarding the breakdown of the relevant figures, and the document at page 61. I will return to these questions shortly. However, in broad terms it is clear that the process was

genuinely commenced by an attempt to save costs, and to consider redundancies.

44. In effect what was proposed was that central finance support would replace the Claimant, and half of the finance assistant role. I am satisfied that this was a genuine situation which fell squarely within the scope of s.139(1) of ERA 1996. In other words, it was a classic redundancy situation.

(ii) *Was Mr Mahran dismissed because of the redundancy situation?*

45. Mr Mahran's argument is that he was not dismissed because of the situation I have outlined above, but as a result of other, more sinister, factors. Consequently, he states that he was treated unfairly, and was, in effect, pushed out of the business.

46. I am satisfied that redundancy was the reason for Mr Mahran's dismissal. I found the Claimant's evidence to be, on occasions lacking in objectivity. It was my impression of him that he was not always able to untangle the relevant from the irrelevant. On other occasions, his answers were inconsistent and/or vague, on sometimes quite important issues in the case. For this reason, where there was a divergence of evidence, I preferred the evidence given by the Respondent's witnesses. In particular, I found Mr McAllister to be a thoughtful and even handed witness. I note that he was prepared to concede important points argued by the Claimant at the appeal, when it would have been more convenient to take an alternative course.

47. I hope Mr Mahran will forgive me if I take the next point in fairly general terms. His main argument is that he was dismissed because he had a very poor relationship with his line manager, Mr Moura, and that this significantly tainted the consultation process to the point where it was nothing more than a box ticking exercise. In other words, the claimant asserts that his dismissal was a foregone conclusion because of the history he had with the general manager.

48. In support of this proposition, the Claimant has repeatedly listed issues which he says he raised with the Respondent. In doing so, he asserts that he acquired the reputation of being difficult and uncooperative. It was submitted that some these issues amounted to breaches of the employers duty of care and included (not an exhaustive list) working overtime without pay; being required to take cash to the bank without insurance; being required to work when on leave or on sick leave; HR member's phone being used by her family and the Claimant's personal messages being read and responded to by her husband.

49. I have gone through the correspondence submitted by the parties in some detail. There is evidence that some of these issues were raised by the Claimant. Mostly, they appear to have been first mentioned in the summer of 2020. However, there is no evidence that the Claimant made a formal grievance about any of the matters he now raises in support of his claim

until it became apparent that he was at risk of redundancy. I accept the evidence of Miss Raikar on this point, namely that when issues were raised, they were dealt with to a conclusion with no further action required. Looking at the evidence as a whole, it was my impression that the Claimant had chosen to escalate the importance of these disputes, and he had done so as a direct result of being placed at risk of redundancy. I find that he had done so to try to gain some advantage in the process. I certainly do not accept that there is sufficient evidence that the Claimant was subjected to verbal abuse or intimidation.

50. I am supported in this conclusion because the argument for the claimant's redundancy could not have been simpler. I note what the Claimant himself said about it during his appeal on 7 January 2020: "*....From the first consultation they should have just said the job will be in Glasgow, we don't need you. My redundancy should be different than others....*". With respect, I agree with the Claimant. The Respondent might have dwelt on the figures earlier and at greater length. It seems to me that the cost of central finance support, compared to the wage bill in the finance department, was the crucial information. It does not seem to have been provided until between the second and third consultation meeting. Nonetheless, I find that the reason why the Claimant was at risk was stated clearly throughout.
51. Unfortunately, and perhaps to some extent understandably, the Claimant was not in the mood to listen as carefully as he might otherwise have done. I accept that he was agitated at the first consultation meeting, and that this was the reason why, if it be the case, that he did not absorb the information presented in the slides. It is noteworthy that he was already declaring that the whole process was unfair at the first consultation meeting, which says much about his state of mind at the time.
52. I am satisfied that he was shown all of the slides at pages 53-60 of the bundle at the first consultation meeting. I think it is informative that he has, on a number of occasions, refused to accept this. I note that when he was cross examined, he was very slow to concede that he had seen the slides. I found his evidence on this important point to be evasive and inconsistent.
53. In this regard, I note the content of the ET1, in which the Claimant repeatedly denied being shown anything which showed him how his position was selected as being at risk of redundancy [11] and [21]. Whereas it was quite clear from the slides shown to him at the first consultation meeting that his job was at risk because it was being replaced by the central finance team in Glasgow. It should have been clear that his department was particular at risk because of the availability of management support in the area of finance.
54. I then turn to the information on page 61, which sets out the cost attached to the support offered by the central finance team compared to other options. I find that this was shown to the Claimant at the third consultation meeting. I accept Mr Moura's evidence in this point. As I will repeat below, it might have been better to have been more explicit about the costs

associated with central finance support. I find that it was in the region of £1800 per month. The new structure model was therefore (12 x £1800) + the salary of the part time finance assistant role = £28,633. The previous department costs were the wages of the Claimant (£47,500) plus that of the full time finance assistant (£21,000) = £68,500. This is slightly lower than the figure at page 61, which is £75,343. On either figure, there was the prospect of very significant cost savings attaching to the proposed restructuring. This must have been apparent to the Claimant at some point during the consultation process, and at the time of the third consultation at the latest.

55. I would mention one final point in terms of my assessment of the Claimant's objectivity on some of these issues. During the first consultation meeting, he appears to have requested a calculation of any redundancy payment in the case of dismissal. This was followed up by Mr Moura in a letter dated 19 October 2020 [bottom of 75]. In setting out the figures he picked 31 October 2020 as the termination date, whilst being quite careful to emphasize that this was not the confirmed termination date which would depend on the progress of the consultation process. At [444], the Claimant used the adoption of 31 October as evidence that the process was predetermined. It is quite clear in my view that it showed nothing of the sort. This was, in my judgment, an unreasonable and erroneous complaint, and was typical of the Claimant's approach to much of the process, which was at times confrontational and uncooperative.
56. For the sake of completeness, I would add that I am satisfied that there was insufficient evidence that any of the matters raised by the Claimant amounted to a protected disclosure under section 43B of the ERA 1996. In my view, the matters raised were the ordinary issues that crop up between an employer and an employee. They relate to his working conditions in the general sense. There was insufficient evidence, prior to the redundancy process, that the Claimant reasonably believed that the information he divulged tended to show any of the matters prescribed in section 43B(1). Further, there was insufficient evidence that the Claimant reasonably believed that the disclosures were made in the public interest, and not made narrowly in his own interest. Even if any of the matters complained of to the Respondent were capable of amounting to such disclosures, I am satisfied for all of the reasons stated above, that the dismissal was the result of the redundancy situation, and not a detriment brought about by reason of the Claimant making protected disclosures.
57. Accordingly, I am satisfied that the redundancy was genuine and that it was the reason for the dismissal.

(iii) Did the Respondent act reasonably in the circumstances?

58. In my view, the Respondent did act reasonably in the circumstances. There was, in my view, a lengthy redundancy process, which was proceeded by other discussions about the general health of the business and what impact it might have. By 9 October 2020 at the latest, Mr Mahran was aware that

his job was at risk, amongst others. The extent of the warning in this case was reasonable. There was ample opportunity for the Claimant to engage in the process and to make any appropriate suggestions.

59. In terms of the selection process, I find that it was reasonable in the context of this case to place those within the finance department at risk and to invite them to consider and apply for the remaining position of part time finance assistant. I am satisfied that it was apparent that this constituted a pool of two people (not a pool of one as stated at [34] - this was clearly an error), namely the Claimant and one other (Amroota - the occupant of the full time finance assistant role). I find that this was a fair approach to the process by the Respondent, and that it was not a 'box ticking' exercise as suggested by the Claimant. By reason of the surrounding circumstances, it was a relative straightforward process, which a limited number of potential outcomes. But that does not mean that it was a foregone conclusion.
60. I am satisfied that the process was not predetermined at the point when the Respondent sold the hotel to Interstate. It would have been clear that there were support services available to the Respondent in terms of the finance function of the business. However, I accept what the Respondent's witnesses told me, namely that there was a limited service provided by Interstate, as well as the full service option. It had not been decided that the Respondent would opt for the latter until September/October 2020. This seemed to be entirely consistent with the fact that the Claimant was trained in Interstate related matters in August/September 2020, at a significant cost to the Respondent. I am satisfied that it would not have entered into that sort of expenditure if it had already decided to make the Claimant redundant.
61. Mr Mahran's spent a lot of time complaining that others had not been placed at risk. He argued that he had been viewed as a key worker during the lock down and should not have been selected. Firstly, this argument is factually wrong. I find that others were put at risk in the consultation process, which extended beyond the finance department. Others were made redundant, and others were redeployed or agreed to work reduced hours as a result of the process. Secondly, other departments were in a different position because Interstate did not offer central support for other functions of the business. Where they did, I was satisfied that it was less appropriate to make the switch, and that the possibility was considered by the Respondent. For instance, in respect of the sales department, it was necessary to have a physical presence on the premises, it being the driver for business at the hotel.
62. I am also satisfied that all alternative positions were made reasonably available to the Claimant. Despite stating to the contrary [104], the role of part time finance assistant was offered to him. Not only is it very apparent that he was offered the role, but that he took deep offence at it being offered to him. As he eventually agreed in cross-examination, there could be no insult if it was never offered. I also find that he was offered the role as Galley Host, which was a reception position. Neither of these roles was suitable for him. I can appreciate why he was not interested in either. However, what is

important is that he was offered. The Claimant did not mention any other roles in the Respondent's hotel that he should have been offered, despite numerous opportunities to do so, both during the consultation process, and at the hearing.

63. The Respondent also brought to the attention of the Claimant the website where external Interstate positions were advertised [75]. The Claimant submitted to me that the Respondent ought to have done more than simply provide him with the URL. It should have made positive representations to Interstate (or the employer, if another), and obtained an interview on his behalf. There is some strength in this argument. However, there must be some uncertainty as to whether this was possible, or indeed whether such an intervention would have been beneficial. In any event, the Claimant told me that he was able to apply for one or two of these external positions, albeit unsuccessfully. In my judgment, the assistance offered by the Respondent in this regard was reasonable on the circumstances.
64. The Claimant raised some other issues which I will deal with at this stage. Firstly, he complained that an external auditor had become aware of the process and had been told that he would be dismissed. This is corroborated by WhatsApp messages. However, I did not hear from the person concerned. In the circumstances, it is difficult to ascertain what was said to them, or in what context. I am sympathetic to the challenges of keeping this type of process as confidential as everyone would like. It was an unfortunate incident, but it does not render the process as a whole unfair.
65. The Claimant sought to have the consultation meetings recorded. He was not happy with the notes taken by Miss Raikar. Again, there is some substance to this submission. However, I am satisfied that it is not necessary to record meetings. It is reasonable to make notes. They do not need to be a verbatim record of what is said, although the more accurate they are, the more useful they will be in the process. Whilst the Claimant made complaint about the notes throughout the process, he refused to take advantage of the opportunity to amend the notes, either at the conclusion of each meeting, or thereafter when he was further invited. In my view, he has never been specific about the errors and/or omissions that he alleges, or as to why they should render the whole process unfair. In my judgment, the notes could have been better, but they fall far short of being unacceptable or unfair.
66. I am satisfied that the two alternative scenarios suggested by the appellant at the second consultation meeting were fairly considered by the Respondent. I find that the Claimant offered a 10% reduction in his wages. I find that the suggestion of 20% or 30% came much later, and not during the process. It was his suggestion of a 10% reduction which prompted the creation of the document at page 61 of the bundle. The middle structure is based on the 10% proposal. In terms of why it was rejected, I think the figures speak for themselves. I accept that the Respondent's structure offered much larger cost savings. I take the view that the Claimant's suggestion to me at the hearing, namely that he had bene prepared to

consider a 50% reduction in his wage, to be disingenuous and unrealistic. I note that he had referred to the 20% reduction in his wages during the first lockdown as a silver system“. In which case, it seems unlikely that he would have considered a 50% reduction.

67. In relation to the Claimant's other proposed scenario, i.e. that he be furloughed indefinitely, I am satisfied this was fairly considered and rejected. Like the above proposal, it was discussed in correspondence after the meeting. I accept the Respondent's explanation that there would still be ongoing costs, and that it did not really resolve the situation. The finance role would still have to be performed by someone in the interim period.
68. I also agree with Miss Page, that if there were any flaws in the original consultation process, then these were cured by the way the appeal was conducted. In my view, Mr McAllister carried out a careful and even handed review of the decision to dismiss. In coming to certain adverse views about the way the process had been conducted, it is apparent that he was attempting to be as fair as possible. In am satisfied that, as a result, the overall process was fair and reasonable.
69. In summary, it is my judgement that the Claimant was dismissed on the grounds of redundancy and that the process that the Respondent adopted was reasonable and fair in the circumstances. In other words, the Claimant was fairly dismissed.
70. The claim is therefore dismissed.

01 March 2022

Employment Judge R Wood

Sent to the parties on: 8 March 2022

For the Tribunal Office