Case No: 2205341/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr F Filippi

Respondent: BNP Paribas London Branch

Heard at: London Central **On:** 28-31 March, 1, 4–8, 11-13 April 2022

Before: Employment Judge H Grewal
Ms S Campbell and Mr I McLaughlin

Representation

Claimant: In person

Respondent: Mr J Laddie, Queen's Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 It does not have jurisdiction to consider the Claimant's complaint of having been subjected to a detriment for having made protected disclosures;

2 The complaint of unfair dismissal under section 103A of the Employment Rights Act 1996 is not well-founded;

3 The complaint of unfair dismissal under section 98(4) of the Employment Rights Act 1996 is not well-founded.

REASONS

1 In a claim form presented on 17 July 2018 the Claimant complained of unfair dismissal (both ordinary and automatic for having made protected disclosures), having been subjected to detriments for having made protected disclosures and breach of contract. Early Conciliation ("EC") was commenced on 18 May 2018 and the EC certificate was granted on 18 June 2018.

2 The case has a long procedural history which it is not necessary to set out here save to highlight the following matters. The breach of contract claim was not pursued. The Claimant's case was that he had been subjected to a large number of detriments from about January 2010 to about September 2017. On 18 January 2019 EJ Okafor-Jones made a deposit order in respect of all the detriment claims. The Claimant did not pay the deposit and at a preliminary hearing on 11 July 2019 all but two of the detriment claims were struck out. The two remained subject to a deposit order which the Claimant has paid. The Claimant's applications for specific disclosure have been considered at least at four preliminary hearings and some have succeeded. Notwithstanding that, the Claimant regularly in the course of the hearing before us attempted to resurrect applications for specific disclosure. An order made on 15 March 2019 for evidence relating to the Operations Pathway and IG reports to be heard in private was revoked at the start of this hearing. Witness orders for the attendance of Brian Haughey and Myrna Taylor were revoked on 6 April 2022.

The Issues

3 It was agreed that the issues that we had to determine were as follows.

Protected Disclosures

3.1 Whether the Claimant made any of the following alleged disclosures:

(1) Oral disclosure to Jean Eric Pacini around the second week of January 2010 that the ETS Team in Milan were engaged in non-compliant business concerning Investment Certificates sold to investors in financial institutions issued by BNP Paribas in breach of current regulations and legal obligations;

(2) Oral disclosure to Jean Eric Pacini around the third week of January 2010 outlining the non-complaint practices occurring in Milan and requesting that he report directly to the Global Head of ETS in order to establish control, make decisions and set strategies concerning the solicited business of the ETS Team;

(3) Oral disclosure to Stefan Sbranchella in his Milan office around the third week of January 2010 that the Claimant had serious concerns about the IFAs business and that it should be tackled as it was not compliant, to which Stefano Sbranchella responded that the Claimant should stop interfering and creating frictions within the team;

(4) Oral disclosure to Eric Le Brusq around the fourth week of January 2010 that the ETS Team in Milan was engaging in non-compliant activity relating to the placement of investment products in individual investors and that the practices were unlawful

and must stop, to which Eric le Brusq responded by reprimanding the Claimant and telling him that he must stop challenging the Milan operation;

(5) Oral disclosure to Nicolas Marque around the second week of February 2010 outlining the unlawful business performed by the ETS Team in Milan, including showing him documents relating to transactions, and that it was generating losses for the unaware retail investors and creating a reputational risk to the bank;

(6) Oral disclosure to Remi Frank, whilst travelling with him to Milan on business around February/March 2010, that non-compliant practices were taking place in Milan;

(7) Oral disclosure to Jean Eric Pacini and Eric Le Brusq around the second week of March 2010 that an unlawful mechanism was allowing a rogue intermediary to distribute investment products issued by BNP Paribas without a network of tied agents/private bankers, nor a distribution licence to distribute, some 150 million euros of certificates, enabling BNP Paribas to produce unlawful revenues and that unaware investors were incurring losses;

(8) Oral disclosure to Jean Eric Pacini and Eric Le Brusq around the second week of March 2010 that the Claimant considered that action by top management and the regulator was needed as investors were incurring losses and that the illegal conduct could not be concealed;

(9) Oral disclosures to Jean Eric Pacini, Stefano Sbranchella, Nicolas Marque, Eric Le Brusq, Remi Frank, Marco Valentino, Claudio Andretta, Andrea Magnani, Vincenza Silvestri, Priscilla Todaro and other colleagues in the second quarter of 2010 that the ETS Team in Milan had engaged in unlawful practices relating to the placement of investment products to individual investors, and that BNP Paribas Milan Compliance Department was completely unaware of the business and that a NAC had never been performed, and that Farad Investment Advisors (FIA/Farad) had created, with the collaboration of BNP Paribas itself, a network of unscrupulous intermediaries that induced clients to invest in BNP Paribas Certificates which carried undisclosed commissions, and that the non-compliant practice had benefitted BNP Paribas with approximately 3.5 million Euros in revenue, and that Milan management ahd failedto take action;

(10) Oral disclosures to Marco Valentino, Claudio Andretta, Andrea Magnani, Vincenza Silvestri, Priscilla Todaro and other colleagues around the second quarter of 2010 that the ETS Team in Milan had engaged in unlawful practices relating to the placement of investment products to individual investors and that Stefano Sbranchella had concealed the events and failed to take action;

(11) Oral disclosures to Jean Eric Pacini around June 2012 that the Claimant did not want to be expatriated to Italy and report to Stefano Sbranchella due to the latter's opaque track record and involvement in the unlawful business;

(12) Oral disclosure to Stefano Sbranchella, following a meeting with Mr Frasca in Piazza San Fedele in Milan around the time of the Claimant's relocation to Milan in 2013, attended also by Nevia Gregorini, Claudio Andretta and other colleagues, that BNP Paribas should take action because Mr Frasca proposed that the bank "resumed" the illegal business, which had been performed in 2009/10, as "the perfect

crime" without concerns, as he would be (again) the one taking care of the "cash/under the table" payments to dishonest intermediaries exploiting their individual clients with his new business, First Solution;

(13) Oral disclosures to Srefano Sbranchella between 2014 and 2016 (several times per year, especially in 2016) that competitors of BNP Paribas Italy were engaging in placement of investment products to individual investors, similar to the placement performed by the Milan Team in 2010 and that BNP Paribas Management should take action to stop this illegal business;

(14) Oral disclosures to (and from, as the topic was often brought up by the Team) Marco Valentino, Claudio Andretta, Andrea Magnani, Vincenza Silvestri, Priscilla Todaro, Nevia Gregorini, Francesco de Santis, Luca Comunian and Denis Beltramini between 2014 and 2016 ((several times per year, especially in 2016) that competitors of BNP Paribas Italy were engaging in the same unlawful placement of investment products performed by the Milan Team in 2009/10. Disclosures that Stefano Sbranchella was playing down the issue as he was concerned that a disclosure would have triggered an investigation into his responsibility for the events of 209/10. In particular, it would reveal involvement into the unlawful business, his role in the cover up, decision not to inform the regulators and not compensate the losses incurred by the investors;

(15) Oral disclosures to Stefano Sbranchella at BNP Milan office in October 2016 that the unlawful business was growing and that Mr Frasca had reorganised it to make it look more presentable and was offering a collaboration to ACEPI, whose Chairman was BNP Paribas Head of Legal department, Dario Savoia. These events should not be ignored and action should be taken;

(16) Oral disclosures to Stefano Sbranchella, Dario Savoia and Nevia Gregorini towards the end of 2016 that Mr Frasca's request to collaborate with ACEPI by contributing to the purchase of a software should have been rejected and that management should have stepped in and taken action;

(17) Oral disclosures to Stefano Sbranchella at the new Milan office in the Diamond Building at the beginning of June 2017 that, following an interview with a market participant, a colleague, Francesco de Santis, had produced an analysis of the "unlawful business" and established that three new intermediaries had joined Mr Frasca in performing the unlawful business and that this had grown exponentially since 2016. It had reached approximately €300 million, generating revenue of approximately €15 million for the banks involved and losses potentially as high as €30 million Euros for the investors. Such events could not be ignored and action should be taken;

(18) Oral disclosures to Stefano Sbranchella at the new Milan office in the Diamond Building in June 2017 that there should be a follow up to the email sent by Nevia Gregorini who suggested that, as a first step, top management of the market participants involved in the unlawful business should be contacted and informed that unlawful business was taking place in their Equity Department;

(19) Oral disclosures to Giulia Bennet at the BNP Paribas London office on 4 August 2017 that the Claimant was being persecuted in Milan because of the disclosures that he had made and was formally seeking protection from London HR. Prior to

staring a formal grievance, the Claimant wanted to meet a panel of London-based managers to go over the facts, which also included the treatment of his tax affairs, and make the allegations;

(20) Oral disclosures to Ceri Laurence, Emma Findley, Brian Haughey and Myrna Taylor between the end of 2017 and 2018 at the BNP Paribas office in London that the Claimant wanted to meet a panel of managers and go over certain facts and allegations of wrongdoing.

[The Respondent accepted that the Claimant had raised concerns and made disclosures along the lines of those described above, but made no admission as to whether he made each of the alleged disclosures in the terms set out by him on the dates that he claimed he made them. As the disclosures were made orally and many years before the presentation of the claim the Respondent was not able to respond in detail to each of the alleged disclosures].

3.2 If the Claimant established that he had made the alleged disclosures in the precise terms detailed above, the Respondent admitted that they constituted "qualifying disclosures" within the meaning of section 43B(1) of the Employment Rights Act 1996 ("ERA 1996").

3.3 Whether the alleged disclosures were made to Claimant's employer in accordance with section 43C(1)(a) ERA 1996.

Detriments

3.4 Whether the Claimant was subjected to the following alleged treatment by the Respondent:

(1) Repatriation to the UK on 1 September 2017; and

(2) Temporary removal of the Claimant's personal computer and drive between July and September 2017. (The Claimant withdrew this complaint towards the end of the hearing followng confirmation by Head of Security that no one accessed his files to see whether there was anything illegal in his personal life).

3.5 Whether any such treatment amounted to the Claimant being subjected to a "detriment";

3.6 If the Claimant was subjected to any such detriment by the Respondent, whether it was done on the ground that he had made one or more of the alleged protected disclosures contrary to section 47B(1) ERA 1996.

Jurisdiction (time)

3.7 Whether the Claimant presented his alleged detriment complaints within the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act is or failure is part of a series of similar acts or failures, the last of them (section 4893) ERA 1996).

3.8 If the complaint was presented outside the primary time limit (taking into account the ACAS EC provisions) whether it was reasonably practicable for the Claimant to

have presented the complaints within the primary time limit and, if not, whether they were presented within such further period as the Tribunal considered reasonable (section 48(3)(b) ERA 1996).

Unfair Dismissal

3.8 What the reason or principal reason for the Claimant's dismissal that he had made one or more of the alleged protected disclosures;

3.9 If not, what was the reason or principal reason for the dismissal? The Respondent contends that it was redundancy or some other substantial reason of a kind such as to justify dismissal, i.e. a team reorganisation carried out in the interests of economy and efficiency.

3.10 If it was one of the above two reasons, whether the dismissal was fair.

3.11 If the Claimant was unfairly dismissed by reason of any procedural shortcoming, whether he would have been dismissed in any event (Polkey).

The Law

4 **Section 43B** of the **Employment Rights Act 1996** ("ERA 1996") provides,

> "*(1) In this Part 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,*
> > *…*
>
> *(2) For the purposes of subection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to that is that of the United Kingdom or of any other country or territory"*

A qualifying disclosure made by a worker to his employer is a "protected disclosure".

5 **Section 47B(1) ERA 1996** provides that 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. This section does not apply where the worker is an employee and the detriment in question amounts to a dismissal (**section 47B(2) ERA 1996**).

6 **Section 48(3) ERA 1996** provides that an employment tribunal shall not consider a complaint of having been subjected to a detriment unless it is presented,

> "*(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where the act or failure is part of a series of acts or failures, the last of them, or*

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

Section 207B ERA 1996 extends the time for presenting a complaint to facilitate Early Conciliation before the presentation of the claim.

7 **Section 103A ERA 1996** provides,

"*An employee who is dismissed shall be regarded for the purposes of this Part 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."*

8 **Section 98 ERA 1996** provides,

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

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

(b) that ir is either a reason falling within subsectiob (2) or some other substantial reason of a kind such as to justify the dismissal of the employee holding the position which the employee held.

(2) A reason fall within this subsection if it –

…

(c) is that the employee wss redundant, or

…

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

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

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

An employee is taken to be dismissed for redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the business for rmployees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish – **section 139(1)(b) ERA 1996**.

The Evidence

9 The Claimant gave evidence in support of his claim. The following witnesses gave evidence on behalf of the Respondent (the job titles given in brackets are their current job titles) – Emma Findlay (Senior Employee Relations Advisor), Stefano Sbranchella (Head of Global Markets, Italy), Jean Eric Pacini (Head of Global Markets for Switzeraland, Germany and Austria), Renaud Meary (Global Head of Structured Equity) and Giulia Bennett (Lead UK HR Business Partner for the Equity Derivatives Team). The Claimant had obtained witness orders for Brian Haughey and

Myrna Taylor to attend. They wrote to the Tribunal in the course of the hearing to explain why they would not attend. Their communication was shared with the parties and the Tribunal decided to revoke the witness orders. Neither side objected to that course. The Tribunal made it clear to the parties that we would not attach any weight to the emails that Mr Haughey and Ms Taylor had sent to the Tribunal or to the Claimant. Those emails contained their views and opinions on various issues and were inconsistent. They had been critical of both parties in the case. They had had the opportunity to come and give evidence if they had any relevant evidence to give and had chosen not to do. We would, however, take into account what they had said in the Operation Pathway report because that was a report commissioned by the Respondent and was part of the evidence before us. The documentary evidence in the case comprised about 2,850 pages. We also had before us the documents relating to the preliminary hearings, inter-parties communications and communications between the parties and the Tribunal. That ran into about 3,500 pages. Having considered all the oral and documentary evidence, the Tribunal made the following findings of fact.

Findings of Fact

10 The Respondent is part of the BNP Paribas Group of companies, a global banking and financial services organsiation with its headquarters in France.

11 The Claimant, who is an Italian national, commenced employment with the Respondent on 13 August 1999 as a Sales Executive in its Equity Derivatives Distribution Department based in London. He worked in the Italian distribution business which is responsible for providing Italian distributors (such as retail and private banks, asset managers and life insurance companies) with financial products and solutions targeting final investors. In 2008 the Italian distribution business was covered by three teams – the Italy Structured Product Sales ("SPS") team based in London, the BNL (Banco Nazionale de Lavoro) SPS team based in Rome and the Italy Retail Listed Products ("RLP") team based in Milan. RLP was rebranded as Exchange Trade Solutions ("ETS") in 2010.

12 In November 2008 the Claimant was promoted to Head of the Italy SPS team based in London. In that role he managed two London-based employees, Marco Valentino and Claudio Andretta. He reported to Jean Eric Pacini (Head of SPS for several European countries) who in turn reported to Nicolas Marque (Global Head of SPS). In broad terms SPS involved the sale of BNP Paribas products through distributors predominantly on the "primary market" (where securities are purchased directly from an issuer). In "secondary markets" investors exchange with each other rather than with the issuing entity. National stock exchanges are examples of secondary markets.

13 In the last quarter of 2009 Eric Le Brusq (Global Head of Equity Derivative Sales) and his senior management team decided to rationalise its Italian distribution business by merging the Italy SPS team based in London, the BNL SPS team based in Rome and the RLP team based in Milan. The two teams in Italy both reported to Stefano Sbranchella, Head of Global Equities and Commodity Derivatives (GECD) Italy. One of the issues that arose was who should head the new merged team which was to be called the Retail and Private Banking Distribution (R&PBD) team. Two potential candidiates were identified – the Claimant and Gianluigi Pedemonte who managed the Italy RLP team. It was proposed that the Claimant should become the

Head and Mr Pedemonte the Deputy Head and that they should both report to Messrs Sbranchella, Pacini and Marque.

14 At the end of November 2009 the Claimant and Mr Pedemonte were asked to provide each other with their team's business reviews for that year and the business plans for the next year. The review provided my Mr Pedemonte showed that the P&L of its Third Party Distributor (TPD) business was €4.4 million. 3.4 million of that was on the secondary market based on a notional market of 152 million euros. 2.3 million of that had been brokered by Farad Investment Advisors ("FIA"/"Farad") and had been through Independent Financial Advisors (IFAs).

15 Subsequently, there were meetings and discussions betweent the Claimant and Mr Pedemonte and others about their respective businesses, and what responsibilities those involved in their teams would have in the new team. In an email to Mr Pedemonte on 7 December 2009 the Claimant said that he wanted to understand the TPD business in order for them to come up with a proposed "set up" to be approved by their managers. He said that the part relating to Secondary Market P&L was "more complicated" for him to understand and he asked Mr Pedemonte for further information in relation to that. Having received a response to his queries, the Claimant asked further questions. He said that his focus at that stage was "*only to brainstorm on the 3.3 Mill third party business and see if we can make make it 6 or possibly more next year."*

16 On 14 December Mr Pedemonte sent an email to Eric Le Brusq, which was copied Mr Pacini and other senior managers, in which he set out various concerns he had about how SPS Italy (the Claimant's team) expected his team to function once the businesses merged. He concluded by saying,

> "*If I take all these points, and add the fact that organization and roles are not clear now to me, I am worried that it is going to be difficult to deliver 13 Min Euro budget from my actual business and the developments I would normally envisage"*

That was a reference to the target of €13 million that had been set for his team for 2010. Mr Pacini's reaction was that that was not acceptable and that they needed to be working together.

17 Over the next few days the Claimant asked Mr Pedemonte further questions about the Third Party business involving the IFAs and expressed his reservations about whether it was compliant. He asked for confirmation that it had been validated by Compliance. Mr Pedemonte's response was that it was legitimate, the Claimant had to trust him, Mr Le Brusq had put pressure on him to develop the business and that if BNP Paribas did not want him to develop the business, it would tell him and he would stop doing so.

18 The Claimant's 2009 appraisal was completed by Mr Pacini on 15 December 2009. His objectives for 2009 had included a revenue generation target ("CC Budget") of €20 million for his team and a personal target of €10 Million for him. It was noted that the former had been met in spite of very difficult market conditons and the latter had been exceeded by €3 million. The Claimant's overall appraisal rating was "1" which signified "significantly exceeded expectations". The two areas in which his performance was rated "3" (needs improvement) were ability to delegate and

empower and strategic thinking. His objectives for 2010 included a team generation revenue target of €24 million and a personal target of €7 million. His personal target was reduced to reflect his increased management role. His primary responsibility in his new role was the revenue generated by his ten direct reports. His individual revenue contribution continued to be important but it was his second priority.

19 Around January 2010 the Claimant spoke to Mr Sbranchella and raised some concerns about the business being conducted by the RLP team with FIA/Farad. He queried whether FIA had the required licence from CONSOB (the public authority responsible for regulating the Italian securities market), whether it was receiving fees for its services in connection with the distribution of BNP Paribas certificates on the secondary market and, if so, whether that was legitimate and whether it was involved in making payments to tied agents and, if so, whether that would mean that BNP Paribas Milan was facilitating a breach of contract between those agents and the firms for which they worked.

20 On 8 January 2010 Jean Eric Pacini shared with senior managers his first draft of restructure. He said that the new team would be headed by the Claimant who would report locally to him and globally to the head of the two product lines – Nicolas Marque for SPS and Thibault Gobert for RLP. He said that besides his management role the Claimant would keep direct coverage of some of the largest Italian distribution networks. Mr Pedemonte would be his deputy and, besides his management role, he would have four specific mandates, one of which was the unsolicited RLP trading. Mr Sbranchella suggested that the Claimant should also report to him as Head of GECD Italy. Eric Le Brusq did not agree that the Claimant should report to the head of RLP. Having considered the views of the managers, Mr Pacini revised his draft.

21 The changes that he made were that the Claimant would no longer report to Thibault Gobert for RLP and that Mr Pedemonte would report to him for the RLP “market” activity (unsolicited trading). He spoke to the Claimant about it before the new structure and reporting lines were announced. The Claimant was very unhappy that he did not have a direct reporting line to the Head pf RLP. The official announcement of the merger and the creation of the R&PDB team was formally announced on 9 February 2010.

22 At a regular catch up meeting wirh Mr Pacini in the first quarter of 2010 the Claimant raised his concerns about the ETS (formerly known as RLP) team’s connections with FIA/Farad and its distribution of investment certificates issued by the ETS team which he believed might be breaching Italian financial services regulations. They agreed that the Claimant should continue with his review of the business and report back to Mr Pacini once he had a clearer understanding of the practices about which he was concerned.

23 At the end of February 2010 Mr Pedemonte sought advice from Daniele Scolari, Compliance Officer, about a business which he said they wanted to develop in Italy. He said that they intended to sell to independent finacial advisors (IFAs), which he said fell into three different categories, in primary and seconday markets, certifciates issued by BNP Paribas. He sought advice as to what constraints there were on doing that kind of business and what contracts should be in place. Mr Scolari responded that it appeared to him to be “*a very complex and sensitive project”* and as a result advised that curtain preliminary steps would need to be taken. The proposal would

need to be justified by a solid business justification, it would have to be approved by a NAC (New Activity Committee) and would have to operate on the basis of the polcy framework designed for retail investors in Italy.

24 On 3 March 2010 the Claimant and Mr Pedemonte met with people from the Compliance team in London and it was agreed what business ETS could or could not do with the various categories of IFAs in Italy.

25 On 3 March 2010 Shaun Wainstein, Head of UK Equity and Commodity Derivaties, informed Mr Le Brusq that he had reduced the Claimant's bonus for 2009 from £700,000 to £620,000. The Claimant acknowledged that he was not the ony one in the organisation to have his bonus cut, which was not surprising in light of the 2008 financial crisis. There was no evidence that Mr Wainstein was aware of the concerns that the Claimant had raised about the ETS team's dealings with FIA. It appears from another document in the case that the Claimant might in the end have been paid less than £620,000.

26 There continued to be disagreements between the Claimant and Mr Pedemonte about the development of the business with the IFAs and the Claimant suggested that it would be good idea to raise it with Mr Pacini. In the second week of March the Claimant raised his concerns about the business with Messrs Pacini and Le Brusq. Mr Le Brusq got angry and reprimanded the Claimant for interfering in a successful business.

27 On 27 April 2010 a conference call took place between the Claimant, Mr Pedemonte and staff in Legal and Compliance about the business conducted by the Milan office with FIA (Farad). Their view was that they needed to look into the issue to see whether certain practices complied with the relevant regulatory requirements and to carry out an assessment of the reputational risk of carrying out that business. On the following day Mr Pedemonte instructed his team to suspend the business pending the review to be carried out by Legal and Compliance. The Claimant sent Mr Pedemonte an email, which was copied to Mr Pacini, in which he said that his view, now that he understood clearly the business being transacted with Farad, was that it could not continue in its current form, but that he would wait for input from the senior managers.

28 Mr Pacini discussed the concerns raised by the Claimant with Messrs Le Brusq, Sbranchella and Geoffrey Rodrigue. They all agreed that the business should be put on hold while they looked into the concerns raised by the Claimant together with Legal and Compliance. That continued over the next two months. On 1 June the Head of Legal in Italy advised on the payment of fees to financial intermediareis (such as FIA) in connection with securities In the secondary market. The advice was that Italian regulators' position would not be relevant for payments made for such services on cross-border basis and that Italian regulators did not at that time have an official position on payments made to Italian based intermediaries. It was, however, difciult to take a view on how such payments would be considered by them in the future.

29 On 11 June 2010 following a meeting with the Managing Director of FIA, Mr Pedemonte told the Claimant and Messrs Sbranchella, Pacini and Rodrigue that FIA was undergoing a deep re-organisation of its shareholding and activities and as a result was putting its activities with BNP Paribas on hold. Thereafter, BNP Paribas

did not carry out the business about which the Claimant had raised concerns. Mr Pedemonte resigned on 27 July 2010 and left BNP Paribas soon thereafter. Mr Le Brusq left BNP Paribas in 2013.

30 Following Mr Pedemonte's departure, Roberto Albano was appointed Head of the ETS (RLP) team in Milan. On 22 September 2010 Nicolas Marque told the Claimant that he would not be responsible for that business any more and that Mr Albano would not report to him. The Claimant's salary was not affected as a result of this responsibility being removed from him. The Claimant's total remuneration package for 2010 was higher than for 2009 (£185,000 salary and £552, 712 bonus).

31 Towards the end of 2010 Mr Pacini was moved to a different role and ceased to be the Claimant's line manager.

32 The Claimant's 2010 appraisal was carried out by Shaun Wainstein.The Claimant had met the obectives for the revenues to be generated by him personally and by his team. His overall rating was "*Consistently met expectations."* (At that stage the ratings were "significantly exceeded expectations" (1), "consistently met expectations" (2) and "performance needs to be improved"(3)). Mr Wainstein's overall comment was,

> **"***Another consistently good year for Fabio and the team. Fabio has managed to maintain revenues since 2008, where other SPS teams saw bigger declines in revenues. As a producer and in development of a good young team, Fabio proved himself. He still needs further proof of his ability to manage more senior teams."*

33 In March 2011 there were discussions between Amaury des Desert (who was the Claimant's line mamager at that time) and Geoffrey Rodrigue as to whether he should be made head of the Milan ETS team again. The Claimant met with them in Paris to discuss the matter. Mr Rodrigue told him that he was proposing to set a budget (revenue generation target) of €5 million for that business. The Claimant's view was that that was unrealistic. The offer of promotion was not pursued by his managers because they felt that he lacked the vision to generate the kind of revenue that they were proposing.

34 By 2012 Mr Pacini was the Claimant's line manager again. In about May/June 2012 the Bank decided that it made sense for the Claimant's team to be relocated to Milan. The client base, markets and BNL were based in Italy. It was envisaged that initaiily the Claimant and Claudio Andretta would transfer and that Marco Valentino would remain in London for the time being. It was not clear whether the move would take the form of a secondment or a local contract. It was proposed that the Claimant would report locally to Mr Sbranchella. Mr Pacini discussed the move with the Claimant at the start of June. The Claimant did not want to move to Milan for personal reasons and also expressed reservations about reporting to Mr Sbranchella. The Claimant regarded Mr Sbranchella as being at the same level of seniority as him and did not think that he had a good enough track record in trading to manage a client-driven business.

35 Over the next few months the Claimant engaged in discussions with his managers and HR about the package that he wanted if he relocated to Milan. Ultimately, it was agreed that his basic salary would be increased to £210,000 (which was more than

what Mr Sbranchella's salary was at the time) and that he would receive 80% of his housing costs as opposed to the 50% that the Respondent normally paid.

36 On 19 November 2012 it was announced that the Claimant had been appointed Head of Structured Equity Sales (excluding Strategic Equity) for Italy and that he would be relocating to Milan, Roberto Albano (Head of ETS) would join his team and that Andrea Magnani and his team in Rome would also report to him. Locally the Claimant would report to Mr Sbranchella. Discussions about the Claimant's relocation package continued through most of the following year, and it was only on 23 September 2013 that the Claimant signed the international assignment agreement. It stated that the assignment would end on 30 November 2016 at the latest but that his home country retained the right to terminate his assignment at any time and for any reaaon. The Claimant relocated to Milan on 1 December 2013 and Mr Sbranchell became his local line manager.

37 In March 2013 the Claimant was awarded a bonus of £279,680 for 2012. The Claimant's performance objectives for 2014 set in his appraisal at the end of 2013 included a personal client contribution (revenue generation) of €4 million or more and high value added transactions of at least €2 million.

38 In January 2014 the Claimant's job title was changed to Head of Distribution Retail Sales for Italy. In March 2014 he was awarded a bonus of £423,923 for 2013.

39 At some point shortly after the Claimant moved to Milan he mentioned to Mr Sbranchella that he was concerned that certain competitors were involved in practices involving the payment of distribution fees for tranasactions executed on the secondary market. That was the same kind of business about which the Claimant had raised concerns in 2010. Over the next couple of years there were several discussions within the team about certain competitors engaging in that kind of business. BNP Paribas and many of its main competitors did not do so. BNP Paribas did not take any action in respect of the competitors who were engaged in that kind of business. It was felt that it was most appropriate for the matter to be addressed by ACEPI (Italian Association of Certificate and Investment Products).

40 Soon after his relocation to Milan, the Claimant dicovered that he would be taxed on deferred cash bonuses awarded in the UK both in Italy and the UK. He maintained that that was contrary to the advice that he had been given by the Respondent's external tax advisors before he moved to Milan. The Claimant was very angry and frustrated about the issue and raised it with a number of people. The issue persisted through most of 2014. Eventually, the Claimant entered into an agreement with BNP Paribas Milan that they would loan him the funds to pay the taxes and he would reimburse them at a later date.

41 The Claimant's 2014 appraisal was conducted by Mr Pacini at the end of the year. His overall performance rating was " 3" which denoted above expectations." (The ratings had changed and went from 1 to 6, 1 being the highest. 1 denoed "outstanding performance", 2 "significantly above expectations" and 4 "meets expectations"). His rating for the objective relating to his individual contribution to the team revenue was "5" which denoted "below expectations." Mr Pacini noted, "*No primary trade directly originated by Fabio. Second priority compared to team realization but important to "lead by example" with a couple of major transactions each year."* In the following March, he was awarded a bonus of €625,000 for 2014.

The Claimant's basic salary for 2014 was €225,000. His total remuneration package was €850,000.

42 The Claimant's 2015 appraisal was conducted largely by Mr Sbranchella with some input from Mr Pacini. The objective for individual contribution to team revenue had been personal client contribution of €3 million and 1-2 high value added transactions. Although the Claimant did not achieve the personal client contribution of €3 million he was rated "2" ("siignificantly above expectations.") Mr Sbranchella noted, "*Fabio gave up most of his clients to Denis and Priscilla* [members of his team] *but played at same time a key senior role in deal closing."* The rating for team revenue was "2 – significantly above expectations." There was one objective for which the Claimant received a rating of "5 – below expectations". That was for the objective to keep growing THEAM franchise, in particular, to ensure the success of retailization plan through both BNL and third party distributors. Mr Sbranchella's comment in relation to that was "*Good result on BNL project, still to improve with third parties."* The overall performance rating was "3 – above expectations." In the following March the Claimant was awarded a bonus of €540,000 for 2015.

43 On 18 July 2016 the Claimant's expatriate assignment to Milan was extended for a further two years (from 1 December 2016 to 30 November 2018) on the same terms and conditions as the previous assignment. .

44 In the summer of 2016 the Claimant was absent sick from work for a period of about eight weeks following a diagnosis of depression. This coincided with BNP in Milan seeking to recover the money that it had advanced to the Claimant for the payment of his tax in Italy and difficulties in his personal life.

45 Following a business reorganisation in September 2016 Mr Pacini ceased to be the Claimant's line manager and Renaud Meary (Global Head of Equity Derivatives Distribution Sales) became the Claimant's operational line manager. The Claimant continued to report locally to Mr Sbranchella. Mr Meary was a more senior manager than Mr Pacini. He visited Milan in October 2016 and met the Claimant. He also had a few meetings over the telephone with the Claimant. He did not know anything about the concerns that the Claimant had raised in 2010. Mr Meary was not very impressed with the Claimant. He was surprised by the low number of meetings with clients the Claimant had arranged when he visited Milan and the fact that these meetings took place in a café.

46 Messrs Meary and Sbranchella did the Claimant's performance appraisal at the end of 2016. The Claimant received performamce ratings of "5 - amost meets expectations" for the following three objectives – the team's target for revenue generation, individual contribution to the team revenue and public distribution. The Claimant's objective for individual contribution had been the same as in the previous year. As in the previous year, he had not generated any revenue but, unlike the previous year, he had not originated any any new clients or major deals. His overall performance rating was "4 – meets expectations". Mr Meary's comments were,

> "*Fabio went well through a very challenging for the PB&D business* [sic]: *despite tough market conditions and low client activity, the team performance was not far from the budget thanks to well diversified client and product base.*

> *He improved in team management thanks to effective delegation, he can still improve in the way he manages conflicts within the team and the way he delivers feedback.*
>
> *Fabio needs to become more visible internally and externally managing high-level relationships with Italian clients."*

Conflict management, feedback delivery and communication were identified as areas in which improvement was required. There had been complaints from the Claimant's team that he tended to micromanage, lacked clarity in presening team objectives and held lengthy meetings before indiscriminately large audiences without clear agendas or targets. Mr Magnani had complained that the Claimant very rarely visited team members in the Rome office despite the fact that the majority of the team revenue was derived from that team. The Claimant's objectives for 2017 in respect of clients and revenue were to originate revenue from new clients or "sleeping clients", ensure intensity of client interactions, and upgrade the level of relationship with clients alongside with FIG and local management. The objectives in respect of team management were to lead the team by example with strong focus on junior people, increase effective delegation, and to spend more time with all team members (including Rome based people).

47 The overall performance rating was lower than what the Claimant had received in the previous two years and, taking into account the changes in the ratings, was his worst performance rating. At the appraisal meeting Messrs Sbranchella and Meary explained to the Claimant why they had given him the ratings that they had. They explained to him that he had failed to develop the third party external networks pillar of the business in the way that he had been asked to during his expatriate assignment and he had failed to make meaningful new contacts in the area. He was also reminded that he was not employed as a "non-producing manager" and that he was expected to generate his own revenue as well as ensuring that his direct reports were generating sufficient revenue. The Claimant was unhappy with his rating and did not agree with the feedback given to him. His view was that he had performed well in 2016 because the revenues generated by the PB&D (Private Banking and Distribution) Italian business in difficult times had been higher than those generarted in other parts of Europe. The managers' view was that that was largely attributable to BNL which was managed by Andrea Magnani in Rome.

48 Messrs Meary, Sbranchella and Marque decided to award the Claimant a bonus of €400,000 for 2016. That was €140,000 less than he had been awarded the previous year. Generally all the bonus awards were lower in 2016, but in the Claimant's case the managers also took into account the fact that his performance had not been satisfactory in certain areas. Messrs Meary and Sbrnachella met with the Claimant on 3 March 2017 to tell him about his bonus. The Claimant was infuriated by the decision to award him "a mere" €400,000 bonus and said that it was unacceptable. He shouted at Mr Meary and said that he was being treated unfairly because he was not French and not based in Paris. He said that he was the best manager among his peers as evidenced by the performance of his team and that if he wanted to he could find a new job in a matter of a few days. He left the meeting without saying "goodbye" or "thank you."

49 In the first quarter of 2017 Messrs Meary and Sbranchella contined to monitor the Claimant's performance, in particular, to see whether he had taken on board the

points that they had made at the appraisal meeting. There was no evidence that the Claimant had made any significant new client contacts during that period and it appeared that he was spending less time maintaining existing client relationships. He was continuing to delegate to his direct reports and as a result was not generating any meaningful client revenue. He was an expensive resource (he had been paid a total package of €710,000 in 2016) and it was not clear what value he was adding to what the team was producing. During this period a talented junior member of the Claimant's team resigned and cited as a reason for his resignation the fact that the Claimant had repeatedly ignored his concerns about the content and evolution of his role. A senior member of the team contacted Mr Meary to share his dissatisfaction with the Claimant's management methods.

50 Messrs Meary and Sbranchella arranged to meet with Nicolas Marque and Christophe Jobert (Head of Continental Europe for Global Markets) to discuss the issue. They met in Paris on 27 April 2017. Messrs Meary and Sbranchella explained to them that the Claimant was not generating any revenue himself, he was not developing new relationships with major cleints, was spending less time maintaining existing client relationships, the Claimant's team had evolved and could function equally well without him, some members of his team had complained about his style of management and he was an expensive resource. Their was a discussion about whether they really needed him in that role. They concluded that the Claimant's usefulness to the business had run its course. They recognised his historic contribution to the business but his role in the team no longer made sense from a business perspective. They agreed that the Claimant's team should be reorganised and his role deleted.They agreed that the Claimant would be given six months to find an alternative role, either internally or externally, and that they would assist him in his search. It was agreed that Messrs Meary and Sbranchella would tell the Claimant of their decision at the earliest opportunity.

51 This was an important meeting at which the decision to terminate the Claimant's employment was made. There is no reference to this meeting in the Respondent's response, which gives the impression that the decision to make the Claimant's role redundant was first made in November 2017.

52 On 24 May 2017 Messrs Meary and Sbranchella met with the Claimant to communicate the decision to him. They told him that that senior management had decided to restructure the team without his role to save costs and improve efficiency and that he should look for a new role. They explained that it was felt that he did not contribute to the team either by developing new clients or generating any revenue himself and that there were issues with his leadership of the team. They told him that they would give him six months to find a new role and would help him in any way they could. The Claimant said that he could not understand why the decision had been made and said that six months was not enough time for him to find a new role and that he would need at least 12 or 18 months. They told him that that was not possible. Neither the Claimant nor the Respondent referred to this very important meeting in the pleadings. The Claimant referred to a meeting at the end of May 2017 in his witness statement but his account of what was discussed bears very little resemblance to what both sides now accept was discussed at that meeting. Both sides for different reasons (which we shall discuss later) have chosen at different times to pretend that this meeting did not take place.

53 On 30 May Mr Jobert repeated to the Claimant the message that had been relayed by Messrs Meary and Sbranchella six days earlier.

54 In the beginning of June 2017 members of the Claimant's team (Nevia Gregorini, Denis Beltramini, Marco Valentino and Francesco de Santis) and the Claimant exchanged emails (which were also copied to Mr Sbranchella and Dario Savoia, who was Head of Legal for CIB, Italy and President of ACEPI) about rumours that various competitors were paying fees to distributors in connection with placement activity on the secondary market. In one of the emails the Claimant asked Mr Savioa what had become of the attempt by First Solutions (run by the person who had previously run FIA (Farad) to join ACEPI. He said that he hoped it had been removed. He also asked whether something could be done at ACEPI to put an end to the practice which was not only scandalous but risked ruining the whole market. There was a discussion about whether the Claimant and/or Mr Savioia could meet with senior people in the organisations involved to try to persuade them to change their strategy. On 7 June Mr Sbranchella suggested that they had a meeting to discuss the issue.

55 In his witness statement the Claimant said that in the middle of May 2017 Mr de Santis had sent an email that contained a market report showing that the unlawful business ahd grown from €30 million to €300 million in the past two years. In all the other documents in this case the Claimant has said that Mr de Santis sent this email in June 2017. The Respondent has been unable to locate any such email. We are prepared to accept that such an email might have been sent but, if it was, it tt was sent in June 2017.

56 In the second week of June 2017 there was a meeting by videoconference to discuss the issue. There was a discussion about some competitors carrying out this business and what should be done about it. Mr Sbranchella's view was that they should mainitain communications though ACEPI.

57 On 20 June Ms Gregorini provided Mr Sbranchella and the Claimant with the names of some senior contacts at the competitors conduitng this busiess and suggested that perhaps they should contact them. The Claimant was willing to do ao but Mr Sbranchella said that at that stage they should continue monitoring it and discuss it again in September.

58 Around the middle of June 2017 Messrs Sbranchella and Meary spoke to Giulia Bennett (lead UK HR Business Partner for the Equity Derivative team) about their plans to reorganise the Claimant's team and to delete his role. They told her that he had been told of this decision at the end of May and had been given six months to find a new role. They sought her advice as to what steps needed to be taken to achieve that. Ms Bennett's advice was that their decision to restructure the team without the Claimant created a potential redundancy situation. She said that generally when the role of an employee on expatriate assignment was made redundant, the standard practice was to repatriate the employee and to deal with the redundancy in his home country. She said that she would speak to the HR team in B Milan to ascertain what the risks were from an Italian law perspectcive. A few days later Ms Bennett discussed the matter with the Paola Cremenosi, HR Business partner in Italy. Ms Cremenosi advised her that the process of making senior employees redundant in Italy could be very onerous and costly. The redundancy entitlement for senior employees ("dirigentes") was far more generous than the corresponding UK entitlement. On that basis, they agreed that it would be far more

cost effective for the Respondent for the redundancy process to take place in the UK. Ms Cremonesi also advised that in order to minimise the risk of the Claimant being entitled to claim Italian redundancy, they should wait at least two months after repatriating the Claimant before starting the redundancy process.

59 At the end of June 2017 Ms Bennett relayed that advice to Messrs Sbranchella and Meary. If the Respondent wanted to terminate the Claimant's employment in November (at the end of the six months it had given him to find a new role) and wanted to avoid him being entitled to claim Italian redundancy pay, it had to repatriate him to the UK at least two months before it started the redundancy process. The decision was made to repatriate him on 1 Sptember 2017 but not to give the Claimant any reason for the early repatriation. There was for the same reason no reference by any of the Respondent's witnesses to the meetings of 27 April and 24 May 2017 in the investigation of the Claimant's grievances or in the Respondent's response. The Respondent was concerned that it if it admitted that the decision to terminate the Claimant's employment because his role no longer existed had been made while he was still in Italy, he might be entitled to claim that it had to pay him the very substantial Italian redundancy pay.

60 On 29 June Ms Bennett instructed the International Mobility team to prepare a letter to repatriate the Claimant on 1 September 2017.

61 On 12 July Mr Meary, Mr Sbranchella and Ms Bennett met with the Claimant. The Claimant and Ms Bennett attended the meeting in London in person and Messrs Meary and Sbranchella dialled in. Mr Meary told the Claimant that his expatriate assisgnment would end early and that he would be repatriated to the UK with effect from 1 September 2017. The Claimant was surprised and upset. He said that he did not want to return to London and saw his future in Italy. He asked why he was being repatriated early and Mr Meary said that the Respondent had the right to repatriate at any time and was exercising that right. It did not have to give him any reason.

62 After Messrs Sbranchella and Meary left the meeting Ms Bennett gave the Claimant the letter confirming the terms of his repatriation which he had to sign. The Claimant asked her what his options were if he refused to repatriate. Ms Bennett responded that one of the options could be to explore a mutual exit if that was of interest to him. She had with her a document setting out what the terms of an exit package might be for the Claimant. The Claimant said that any settlement package would have to include a guaranteed bonus. Following the meeting Ms Bennett informed Messrs Meary and Sbranchella and Ms Cremonesi about the conversation relating to a termination package. Ms Cremonesi said that she would seek advice from the lawyers in Italy on the appropriate time to start any negotiations to avoid the termination falling under Italian law.

63 On 14 July the Claimant signed the repatriation letter and returned it to Ms Bennett and said that he would repatriate to London on 1 September 2017.

64 On 28 July the Claimant contaced Ms Bennett and asked for a meeting with the Global Head of HR. He said he wanted to raise certain complaints and asked whether it was appropriate to discuss them with the Global Head of HR or the Bank had any procedures to address complaints. Ms Bennett sent him a copy of the grievance procedure and he said that he wanted to raise matters informally as

specified in the grievance procedure. He agreed to meet with Ms Bennett on 4 August to raise his complaints.

65 The meeting on 4 August lasted about three hours. Ms Bennett made notes at the meeting. The Claimant began by saying that he felt that he was being treated unfairly by being sent back to the UK. He said that he had initially taken over the management of the team in Italy in 2010. He talked about the tied agents' distribution business which was taking place at the time and which he described as "illegal business". He said that it had stopped in the middle of 2010 and that some of the competitors were now doing the same business. He aso talked about the treatment of juniors in the team. He spoke briefly about both these matters. The Claimant spent the majority of the time at the meeting comaplaining about his tax issues. He explained in detail how the problem had arisen, why he felt that he had been treated unfairly and the impact that it had had on him.

66 Following the meeting Ms Bennett sent the Claimant an email. She said that she was unclear which (if any) of the issues that he had raised he wanted to be addressed and how he wanted them to be addressed. She reminded him that if he wished to make any of the complaints formal he would need to put them in writing and they could then be addressed as part of the formal grievance process. The Claimant responded,

> "*I do wish to make the complaints formal but I am equally happy to keep the exercise informal and in fact I would very much prefer the format I mentioned to you today ie to be given the opportunity to share specific facts which I deem shortfalls or mistakes dangerous for the employee and the bank itself with a panel of senior people such as …*"

The names of the people who could be on the panel included Messrs Sbranchella and Meary, Nicolas Marque and Dario Savioa.

67 On 4 August Mr Meary sent the Claimant an email that following the decision to repatriate him to London, his responsibilities as Head of Distribution Retail Busines Italy remained unchanged. The Claimant responded that he felt that an informal email to a few key team members explaining the rationale of the relocation and confirming that no changes were planned for at least six months would be helpful. Mr Meary replied that it was not best practice to discuss the reason behind his repatriation with the team via email and as his role had not changed he did not see the need to communicate any further. The Claimant responded that some clarity would be helpful for him. He said that on 24 May they had told him that a decision had been made to restructure his team without him and he should find another job in the group. He had been told that there had been problems with the way he had dealt with juniors in the team and that the team would perform in the same way without him. Five weeks later he was being made to feel that he was relevant again but when he asked for confirmation that there would be no restructure over the next six months, he did not get a clear answer.

68 On 1 September the Claimant repatriated to London. Following his return he continued to raise issues with his managers about his tax issues. On 5 September the Claimant informed Ms Bennett that he wanted to raise a formal grievance. He said that there were several topics that he wanted to discuss but the one that he wanted to focus on the most was the payment of €650,000 Euro of deferred shares

into his UK bank account while he had been in Italy between 2014 and 2017. Ms Bennett asked him to put in writing the complaints that he wished to raise. She said that other than the issue about the payment of the deferred shares, she was unclear as to what the others were. She also pointed out that under the grievance procedure he was not entiiteld to meet with a panel of senior employees of his choosing. On the same day the Claimant informed Mr meary that he was rasing a formal grievance about the issue of his double taxation. In na email to Ms Bennett about the Claimant's grievance, Mr Meary said,

> "*I am also worried about the potential interference of this process with any other action we might be inclined to take in the near future."*

That was a reference to the decision that had been take in April 2017 to erminate the Claimant's employment after six months if he had not found an alternative role.

69 On 14 September the Claimant wrote to a number of senior managers and tired to organise a meeting to discuss "certain issues". Ms Bennett repeated what she had said about how the grievance would be addressed under the procedure. These discussions continued over the next two months.

70 Ms Bennett had also referred the Claimant to Occupational Health after the meeting on 4 August as the Claimant had referred to his sickness absence for depression in the summer of 2016. The Occupational Health Advisor provided a report on 12 September 2017. The OHA noted that the Claimant was not happy about about being transferred from Milan to London and that he was frustrated that issues relating to his taxation during his secondment to Italy had not been resolved to his satisfaction. The advice was that although the Claimant was frustrated in relation to the situation at work, he was not displaying any symptoms of recurrence of depression and that he was fit to continue working in his role. On 21 September the Claimant asked to meet the OHA. The notes of that meeting were that the Claimant had expressed frustration that he had not been allowed to meet a panel of managers and HR staff to discuss the issues that he had raised about his tax concerns while in Milan. He had been encouraged to submit a formal grievance and he was not keen on that because it was time-consuming.

71 In September the Claimant sent several emails to Ms Bennet and Mr Mearly about accessing his personal documents on the U Drive.. Having responded to one of them Mr Meary said to Ms Bennett in an email,

> "*It is becoming pressing to deal with the next step of the plan, we are all spending too much time on his various issues."*

That was a reference to the decision taken earlier that year to dismiss him in about November 2017.

72 On 28 September 2017 the Claimant sent Mr Sbranchella an email about the business being conducted by the competitors and said that he proposed to contact two of them in the following week and would start with Mr Le Brusq, who worked for one of them. Mr Sbranchella responded "*Ok".*

73 On 7 November 2017 Messrs Sbranchella and Meary and Ms Bennett met with the Claimant. Mr Meary told him that they were proposing to restructure the

Distribution Retail Sales Business, Italy team and that his role had been identified as one that was potentially as risk of redundancy. They told him that this was part of a larger redundancy programme and that there would be collective and individual consultations and that they would explore suitable alternative roles with him. If no suitable alternative role was identified, then it was likely that the Claimant's employment would be terminated by reason of redundancy with effect from 6 December 2017. The process was a sham as all that management was doing was implementing the decision that it had made in April 2017 and communicated to the Claimant on 24 May 2017. There was no possibility that the outcome would be anything other than the Claimant's dismissal. What was discussed at the meeting was confirmed in a letter from Ms Bennett to the Claimant.

74 Ms Bennett held a first consultation meeting with the Claimant on 8 November 2017. The Claimant asked for a draft settlement agreement and that was provided to him.

75 On 28 November 2017 the Claimant presented his formal grievance. The grievance comprised 6.5 pages typed in a small font. It was divided into two parts. The first part covered 5 pages. The Claimant said that the first part was his priority and that it contained tax topics and was the most complex part of the grievance. He said that the second part was less critical to him but was very much related to the first part because he believed "*there is a very high correlation between the tax dispute and the repatriation and redundancy.*" He later said,

> "*The theme of part 2 is that I believe that there is a very high correlation between the Milan tax dispute, the repatriation and subsequent redundancy and I suspect that many facts that happened over the last 6 months are related to the same issue. So the tax dispute may have ultimately ruined my career.*"

In his grievance he referred to the meeting at the end of May where his managers had asked him to look for another job as he "*brought zero value addition*" to his team. There was no reference in the grievance to his having made protected disclosures about the "illegal business" and to that being the reason for his repatriation and dismissal. By this stage the Claimant knew that his employment was going to be terminated shortly. If he had genuinely believed that he was being dismissed because he had made protected disclosures, there was nothing to stop him saying that. He had nothing left to lose by then.

76 As the Claimant was alleging that there was a link between his tax complaints and his redundancy, Ms Bennett informed him and his managers on 30 November that his consultation period would be extended while his grievance was investigated.

77 On 30 November Mr Meary sent Ms Bennett and Ms Cremonesi an email. He said that he and Mr Sbranchella were in the process of redefining the organisation of the Claimant's team after his departure. He said that they were interested in meeting with staff who might be interested in taking over the Claimant's responsibilities. He said that they proposed to tell them how they saw the role and what they would expect from the person selected. These included strategic vision to define mid-term objectives and priorities and promotion of that strategy, ability to develop third party business, ability to develop further BNL and Public Distribution pillars and management skills. The advice was that they should prepare a job description and

wait until January before they started the process. There was then some frustration on the part of the managers when the grievance process had not concluded in early January and Ms Bennett advised that once they had a signed settlement agreement with the Claimant and he could not litigate against the bank, they could start the recruitment process.

78 Ceri Lawrence (Senior Employee Relations Advisor) was asked to hear the Claimant's grievance. She met with the Claimant on 6 December 2017. The interview was recorded and the transcript of it runs into 90 typed pages. The vast majority of the discussion (over 80 pages) was devoted to the Claimant's complaint about his tax affairs – the payment of his deferred bonus, the advice given by the Respondent external advisors, the tax implications and how BNP Paribas had dealt with his complaints about that. About a third of the way into the interview, the Claimant said that he had seen a lawyer for the first time five or six days earlier and the lawyer had suggested that perhaps his nationality had held him back at the Bank. He said that he was always not part of the group because his ethical levels were above the average. He said that when he had gone to Milan in 2010 he had discovered that Mr Pedemonte was "*doing illicit business.*" He said that he had told him that it had to stop and he had raised it with Mr Pacini and that they had both raised it with Mr Le Brusq who had shouted at him and told that he should not get involved. He then went on to talk about the meetings in May 2017 when he had been told that he did not add value to the team in Milan and had been given six months to find another job in Milan. He initially said that his assumption was that he was being repatriated to London because "*the tax thing was exploding*". He then reverted back to talking about the tax issues. Later he mentioned a lawyer and him saying something about public interest disclosures. Ms Lawrence asked him what he was saying about a protected disclosure. He replied that the bank had made a mistake about the tax and then said, "*But more importantly is that I go back to the old story. This business that we were making in 2010-2011-2010, which was promoted by Stefan Sbranchella, my boss of now, was completely illegal, was just shocking.*" He continued that over the years he knew they had stopped it. He then said that their competitors in Italy had started doing the illegal business and he had said that they should go to the Association of Insurers or to the busineses themselves and tell them that they had to stop it. He said that Mr Sbranchella had been reluctant to do that because if they had, the other banks would have said that he was the one who started it. He said that Mr Sbranchella had said that they would talk about it after the summer and then he had been repatriated to London. He said, "*So for me, the repatriation could come from either this or tax.*" Later he said, "*But I know why I was sent to London. Because I told you – because of the problem with these trades that were illegal, because of the tax. And – but the obvious is one is that I am being called 'dirigente'*" He explained that the consequence of him being a "dirigente" was that if he was made redundant the Bank would have had to pay him about €1.8 million. .

79 On 14 December Ms Lawrence informed Compliance in UK about the Claimant's whistleblowing allegations and on 18 December she sent them the relevant extracts from her interview notes. On 18 January, having got the Claimant's consent, Ms Lawrence passed his contact details to Brian Haughey in the Respondent's UK Wistleblowing Investigation team.

80 On 22 January Ms Lawrence sent the Claimant her grievance outcome. She said that his grievance had been divided into two parts – the first part related to the tax arrangements made for for the deferred bonus and the second part was related to his

repatriation to London and his redundancy and whether that was connected with the concerns that he had raised about his tax. She said that the allegations that he had raised about business practices in Milan had been referred to the Compliance department and had not been considered as part of the grievance. She concluded that that there was no evidence to indicate that the Claimant's repartiation to London or his reduncancy had in any way been influenced or caused by the tax concerns that he had raised or by his concerns about business practices in Milan. The Claimant was advised of his right of appeal.

81 On 24 and 25 January 2018 the Claimat was interviewed by Mr Haughey and Myrna Taylor. On 28 January the Claimant sent them an email in which he said,

> "*During our meeting we discussed if compliance related factors may have triggered my sudden repatriation.*
>
> *I mentioned that my becoming more and more pressing that the competitors who were doing the business we started in 2010 should be stopped, even if this could have triggered inquiries as to how the business started, was a factor."*

82 In an email dated 31 Janaury the Claimant told Mr Haughey and Ms Taylor that in the first few weeks of June 2017 Mr de Santis had spotted some big "Farad style" trades in the market and had informed the rest of the team of it by email.

83 On 5 February 2018 the Claimant appealed against the grievance outcome.

84 On 22 February 2018 Ms Bennett and another member of the HR team met with the Claimant to confirm the end of the consultation process and his dismissal for redudnancy with effect from that date. The Claimant was given a letter staing that his employment would terminate on that date by reason of redunfancy and that he would be paid three months' pay in lieu of notice. He was also paid outstanding holiday pay and statutory redundancy pay.

85 The Claimant's grievance appeal was investigated by Emma Findlay, Senior Employee Relations Advisor. She interviewed the Claimant, Giulia Bennett, Ceri Lawrence and Renaud Meary. She sent the grievance outcome letter to the Claimant on 27 March 2018. Neither Ms Bennett nor Mr Meary referred to the meeting that that they had had with the Claimant at the end of May 2017 when he had been told that they had decided to restructure his team without his role and that he had six months to find a new role. The Claimant did refer to that meeting.

86 Ms Findlay sent the Claimant the grievance appeal outcome on 27 March 2018. She did not uphold his grievance.

87 The UK Compliance Anti-Bribery and Corruption ("ABC") team (Haughey and Taylor) produced a report on the Claimant's whistleblowing allegations on 21 May 2018. It was based on interviews with the Claimant, evidence from 37 emails (the majority of them from November 2009 to March 2010 and three from 2012) and various documents relating to FIA (Farad) and associated companies. The conclusions based on that limited investigation were that FIA had misrepresented its position to BNP Paribas and had carried out activities that it was not licensed to carry out. It said that there were due diligence failures on the part of the Bank, coupled with

a lack of understanding of the FIA business. It also said that BNP Paribas management had been well aware of the illegal activity and and had turned a blind eye and contined working with the owner/director of Farad.

88 A dedicated Steering Group, involving Compliance UK, Group Financial Security ("GFS") Paris and other relevant Compliance stakeholders, reviewed the ABC investigation. On 1 June 2018 the Steering Committee asked the Bank's Inspection Generale ("IG") to investigate the issues raised by the Claimant. In the course of its investigation IG retrieved all due diligence documents, transaction data and more than 2.6 million communications, out of which about 20,000 emails and Bloomberg chats were filtered based on a set of keywords. The emails and chats of ten employees (including the key players in this case) were retrieved. It did not find any material evidence to show that Farad was remunerating agents tied to other distributors or that the Equity Derivative (EQD) managers were aware of potential malpractices conducted by Farad. However, its analysis revealed that the activity conducted by Farad in 2009-2010 had not been compliant with Italian regulation since (i) Farad was most likely distributing BNP Paribas certificates on the Italian primary market while not having the requisite licence and (ii) Farad was receiving fees for its distribution activity on the secondary market while such practice was not authorised. When questions had been raised to Compliance and Legal, following the concerns reported by the Claimant in 2010, the Management team had taken the decision to put the activity on hold. Deficiencies identified in the BNP Paribas distribution setup involving Farad in 2009-2010 had mostly resulted from the absence of robust due diligence and approval prcesses to assess the compliance of the activity with all applicable laws and regulations. It had not identified any material that the Claimant's career had been impacted negatively following the concerns that he had reported in 2010. It also stated that it had identified inaccuracies in reports prodiced by Complainance ABC UK.

89 No one was ever appointed to the Claimant's former role. Some of the Claimant's managerial responsibilities were absorbed by one of direct reports, Andra Magnani. Mr Magnani has taken on those responsibilities in addition to his existing role, maintaining his personal responsibility as a producer and continuing to generate his own individual review.

Conclusions

Protected disclsosures

90 We concluded that the Claimant made the following protected disclosures between January and June 2010:

(a) In January 2010 he raised concerns with Mr Sbranchella about the business being conducted by the RLP/ETS team in Milan with FIA (Farad) and suggested that FIA might not have the requisite licence from CONSOB, it might be receiving fees for the distribution of BNP Paribas certificates on the secondary market which might be illegal and might be making payments to tied agents which might be interpreted as BNP Paribas Milan facilitating a breach of contract between those agents and the firms for which they worked;

(b) In the first quarter of 2010 the Claimant told Mr Pacini that he believed that the RLP/ETS team's connection with with FIA and its distribution of investment

certificates issued by the ETS team might be breaching Italian financial services regulations;

(c) In the second week of March 2010 the Claimant repeated the concerns about the legality of the business being carried out by the ETS team with FIA (Farad) to Mr Pacini and Mr Brusq.

91 We also concluded that in early 2014 the Claimant told Mr Sbranchella that certain competitors in Italy were involved in the practices involving the payment of distribuation fees for transactions executes on the secondary market (the same practice about which he had raised concerns in 2010). That amounted to a protected disclosure.

92 Between 2014 and 2016 there were discussions within the Claimant's team about competitors enagaging in this kind of business and what was the best way to deal with it. We are prepared to accept that these amount to protected disclosures but note that they were being made by various members of the team and not just by the Claimant.

93 In June 2017 the Claimant and various members of his team (in particular, Ms Gregorini and Mr de Santis) made protected disclosures to Messrs Sbtanchella and Savoia that they believed that various competitors were paying fess to distributors in connection with placement on the secondary market which they believed was illegal and they discussed what should be done to stop this practice. Mr de Santis sent an email which indicated that this unlawful business had grown in the past two years from €30 million to €300 million. Some of them, including the Claimant, believed that they should contact senior people in the competitors to try and get them to stop this practice.

Detriments

94 There was only one complaint before us of the Claimant having been subjected to a detriment because he had made protected disclosures. That was the repartiation of the Claimant to the UK on 1 September 2017. The first issue that we had to consider was whether the Tribunal had jurisdiction to consider this claim. The claim was presented on 17 July 2018. The Claimant commenced Early Concilaition on 18 May 2018, 5.5 months after the primary time limit of three months expired. The claim was presented 6.5 months after the primary time limit had expired. There was nothing before us to indicate that it had not been reasonably practicable for the Claimant to have presented the claim within the primary time limit. The Claimant has not advanced such an argument. The Claimant was an intelligent and highly paid employee who could have sought legal advice. It appears that he did indeed seek legal advice before his grievance hearing on 6 December 2017. There was nothing that prevented him from putting in that claim a lot earlier than 17 July 2018. We were not satisfied that it was not reasonably practicable for the Claimant to have presented that time within the primary time limit. We, therefore, concluded that we did not have jurisdiction to consider that complaint.

95 In case we are wrong in reaching that conclusion, we set out briefly what we would have concluded had we considered it. We would have concluded that the decision to repatriate the Claimant to the UK was made in June 2017 because of the advice his managers received about the costs of dismissing him for redundancy in

Italy as opposed to in the UK. They believed that it would cost considerably more if the decision to dismiss him was made or carried out in Italy. The Claimant's view was that they would have had to pay him €1.8 million. The advice was also that in order to avoid the risk of having to make that payment he should be in the UK for at least two months before the redunandany process began. Hence, the decision was made to repatriate him on 1 September 2017 so that his employment could be terminated around the end of November in accordance with the decision conveyed to him on 24 May 2017. We accept that the Claimant's witnesses did not give that as the reason for the repatiriation in either the grievance hearing or in its grounds of resistance in these proceedings. They did not do so because they feared that if they did the Claimant would still be able to claim in the Italian courts that he was entitled to the Italian redundancy pay.

96 It was also equally clear to us that the decision was not made because the Claimant and some of the members of his team were raising concerns about the compeititors engaging in practices which they believed might be illegal and discussing what steps should be taken to stop them. The Claimant was not the only one raising those concerns, others in his team were raising the same concerns. Removing the Claimant to the UK would not stop either them or him raisng those concerns. He could continue to raise those concerns from the UK as, indeed, he did on 28 September 2017 when he said that he was going to contact two of the competitors. The Claimant's case was that the Respondent had subjected him to a detriment by sending him to Italy in 2013 and that it had done that because Mr Sbranchella felt that it would be easier to control him if he was in Italy and he was his local manager. That is the opposite of what the Claimant was arguing about his repatriation which was that that was a detriment and he was being subjected to it because Mr Sbranchella wanted him to be removed from Milan to stop him making protected disclosures. For all the above reasons, we would have concluded that that complaint had not been made out.

Unfair Dismissal

Reason for the Dismissal

97 The most important point to make in respect of the Claimant's dismissal is that the decision to dismiss him was made on 27 April 2017 and was communicated to him on 24 May 2017. The latter is not disputed by the Claimant. Both parties have, however, for different reasons and at different times, not referred to these meetings or tried to underplay them. The Respondent's employees did not refer to them during the investigation of the Claimant's grievance and they are not referred to in the Respondent's grounds of resistance. They did not refer to them because they feared that if it was known that the decision was made while the Claimant was working in Italy he might be entitled to a substantial redundancy payment in Italy. The Claimant referred to the meeting of 24 May initially in internal communications and in the course of the grievance process. However, since he brought this claim he has either ignored it or referred to it obliquely without stating clearly what was said at that meeting. He has done that because it does not support his case that the Respondent dismissed him because of the protected disclosures that he (and some members of his team) made in June 2017.

98 We considered first why the Respondent decided on 27 April 2017 to dismiss the Claimant. What was the reason or principal reason for its decision? The decision was

made by the Claimant's two managers (his operational line manager and his local reporting manager) and two senior managers. However, the meeting was instigated by the Claimant's two managers and it was clear to us that Mr Meary was the driving force behind it. Mr Meary had become the Claimant's operational line manager in September 2016. He formed a very different view of the Claimant from the one that Mr Pacini had formed of him over many years while he had managed him. Mr Meary formed a negative view of the Claimant (for reasons which we will set out shortly) but it had nothing to do with the protected disclosures that the Claimant had made in 2010 or subsequently because Mr Meary was not aware of those disclosures.

99 Messrs Sbranchella and Marque did know about the protected disclosures in 2010. Mr Sbranchella had been involved in a lot of the discussions that had taken place at that time. Mr Marque removed from the Claimant the responsibility for the ETS/RLP team in September 2010. It is very likely that the concerns raised by the Claimant, which led to that business stopping in June 2010, played a part in that decision. However, there was no evidence that either of them or anyone else in BNP Paribas subjected the Claimant to any detriment after that because of the protected disclosures that he had made in 2010. Mr Le Brusq was clearly unhappy about the concerns that the Claimant was raising, but he left the Respondent in 2013. The reduction of the Claimant's 2009 bonus in March 2010 by Mr Wainstein from £700,000 to £620,000 had nothing to do with the protected disclosures made in the first quarter of 2010.

100 In March 2011 the Bank was having discussions with the Claimant to return to him the responsibility that had been removed six months earlier. It did not happen because the Claimant felt that the revenue target being set by the managers was too high and not achievable. We do not accept the argument that it was deliberately set at that level so that the Claimant would refuse it. If the Bank did not want the Claimant to take on that responsibility, all it had to do was not offer it to him.

101 The Claimant received a good appraisal for 2010 and his remuernation package for 2010 was higher than that for 2009.

102 The decision in the summer of 2012 to second the Claimant to Milan had nothing to do with the protected disclosures that the Claimant made in 2010. It was a business decision based on the business conducted by the Claimant's team. The Claimant was unhappy to move to Milan for personal reasons. Following negotiations about his remuneration package, the Respondent agreed to increase his basic salary to a level that was higher than that of Mr Sbranchella (his local line manager) and to pay him a higher level of his housing costs than it normally paid. The negotiaitons took nearly a year and a half. All the evidence indicates that the Respondent was patient and accommodating of the Claimant's demands in respect of the relocation.

103 Between 2014 and 2016 the Claimant and some members of his team made protected disclosures about certain competitors in Italy being involved in practices involving the payment of distribution fees for transactions executed on the secondary market (the same practice about which he had raised concerns in 2010). There was, however, no evidence that either Mr Sbranchella or anyone else subjected the Claimant to any detriments for raising those matters. The Claimant received good performance appraisals for 2014 and 2015 and significantly higher remuneration packages (salary and bonus) than he had in the previous three years.

104 The Claimant continued his employment with the Respondent from 2011 to 2016 without being subjected to any detriments and with his remuneration package increasing from 2013 onwards. However, things changed in the second half of 2016. The Claimant had a period of sickness absence because of depression in the summer of 2016 and in September 2016 Mr Meary replaced Mr Pacini as the Claimant's operational line manager. The Claimant had had a very good relationship with Mr Pacini who had been supportive and protective of him. Mr Meary was not impressed with the Claimant. The Claimant had since 2014 been struggling to meet the personal client contribution target set for him. In 2014 Mr Pacini had given him a rating of "5" ("below expectation") for that objective (see paragraph 41 above). In 2015 although he had not met the target of €3 million personal client contribution Mr Sbranchella had given him a rating of "2" ("significantly above expectation") because he had recognised that the Claimant had given up most of his clients to some of his team members and had played a key senior role in deal closing. In 2016 Mr Meary gave him a rating of "5" ("almost meets expectations") for that objective because he did not meet the personal client contribution set for him and had not originated any new clients or closed any major deals. His overall performance rating was lower than it had been the previous two years and worse than any previous rating. Mr Meary made his views clear – the Claimant needed to generate revenue, he needed to develop and manage high level relationships with Italian clients, he needed to improve his management of conflicts in the team and his communication. He monitored the Claimant's performance over the first quarter of 2017 and did not see any signs that the Claimant had taken on board the feedback given at the appraisal and was taking any steps to address the points that had been raised. The Claimant's reaction to the bonus awarded to him made it clear that he believed that he was entitled to high remuneration notwitstsnding the performance shorctomings identified in the appraisal.

105 We concluded that the reasons for the Claimant's dismissal were those given by Messrs Meary and Sbranchella at the meeting on 27 April 2017 (see paragraph 50 above). Their view in essence was that the team would function just as well if it was restructured and the Claimant's role was removed and his main responsibilities were absorbed by an existing member(s) of the team and it would save the business a lot of money. The Claimant was an expensive resourse who was seen as adding no value to the team at that stage. The fact that the Claimant had made protected dsiclosures in the early part of 2010 or with others in his team between 2014 and 2016 played no part in the decision to terminate his employment. The Claimant's case that matters came to a head with the protected disclosures made in June 2017 does not assist him because those post-date the decision to dismiss him and the communication of that decision to him.

106 We concluded that the Claimant's role was not redundant in April 2017 to the extent that the work that he had carried out still needed to be carried out. The Respondent took the view that it could be carried out by existing members of the team at a fraction of the cost of employing the Claimant. It, therefore, reorganised the team by removing his role and allocating his main duties to a member or members of his team. They reduced the headcount and made savings. We think that this is properly categorised as some other substantial reason of such a kind as to justify dismissal.

Fairness of the dismissal

107 We then considered whether the Respondent acted reasonably in treating that as a sufficient reason for dismissing the Claimant. We concluded that it did. The Claimant was a very highly paid employee and the Respondent was entitled to expect him to deliver to a high standard to justify that level of remuneration. The Respondent had made it clear to the Claimant at the end of 2016 the areas in which he had fallen below the standards expected and the improvmemt that it expected to see. It had not in the first one-third of the following year seen any such improvement. The Claimant's failure to take on board and act on the feedback given to him at the appraisal and his reaction to the bonus made it clear that the Claimant continued to expect the same high levels of remuneration without addressing the concerns that had been raised. The Claimant's managers explained to him at a meeting their decision and the reasons for it, and agreed that they would continue to employ him for a further six months so that he could find another role and that they would assist him to do so. The Claimant's role has not been replaced and his responsibilities have been absorbed by his existing team. In fact, the Claimant was not dismissed until 22 February 2018 (nearly 9 months after the decision to dismiss had been communicated to him). We concluded that in all the circumstances of the cas the Respondent acted reasonably in dismissing the Claimant, and that the dismissal was fair.

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Employment Judge - Grewal

Date: 11th July 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

11/07/2022

FOR THE TRIBUNAL OFFICE