# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr G Jones**

**Respondent:** **Tecflo Limited**

# CERTIFICATE OF CORRECTION

## Employment Tribunals Rules of Procedure 2013

Under the provisions of Rule 69, the Reserved Liability Judgment sent to the parties on 14 June 2022 is corrected by amending the case number at the head of each page.

Judge C J Cowx
Date 4 September 2022

SENT TO THE PARTIES ON
5 September 2022

FOR THE TRIBUNAL OFFICE

**Important note to parties:**
Any dates for the filing of appeals or reviews are not changed by this certificate of correction and corrected judgment. These time limits still run from the date of the original judgment, or original judgment with reasons, when appealing.

# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Jones

**Respondent:** TecFlo Limited

**Heard at:** Manchester (by CVP) **On:** 25, 26 & 27 May 2022

**Before:** Judge Cowx (sitting alone)

**REPRESENTATION:**

**Claimant:** Mr Simon John of Counsel
**Respondent:** Mr Simon Lewis of Counsel

# RESERVED LIABILITY JUDGMENT

1. The claimant's claim of ordinary unfair dismissal contrary to Section 98 of the Employment Rights Act 1996 is well founded and succeeds.

2. The claimant's claim of automatic unfair dismissal contrary to Section 103A of the Employment Rights Act 1996 is dismissed.

3. The claimant's claim of breach of contract is admitted and succeeds.

4. The claimant's claim of wrongful dismissal is admitted and succeeds.

# REASONS

5. This was a final hearing conducted remotely by CVP on 25, 26 and 27 May 2022. The parties did not object to the case being heard remotely.

6. The claimant brought the following claims against the respondent:

a. Automatic Unfair Dismissal on the basis that he was allegedly dismissed because he had made a protected disclosure to Mr Geoff Wood, the Managing Director (MD) of the respondent.

b. Ordinary Unfair Dismissal on the basis that redundancy was not the genuine reason for his dismissal or alternatively the redundancy procedure was unfair.

c. Breach of Contract on the basis that the respondent did not pay the claimant salary sacrifice payments to the claimant or to the claimant's pension provider after being placed on the government furlough scheme.

d. Wrongful Dismissal on the basis that the claimant was paid in lieu of serving a 7-week notice period as agreed in his contract of employment and consequently lost the benefit of the company car assigned to him for personal use during the 7-week notice period.

7. On the morning of the first day of the hearing, before the case was opened, Mr Lewis indicated to the Tribunal that the respondent admitted the breach of contract and wrongful dismissal heads of claim (2 c and 2d above), conceding that the salary sacrifice pension contributions should have been paid when the claimant was on furlough and that the claimant was entitled to the benefit of the company car for the 7-week notice period which was not served because of the respondent's unilateral decision to make a payment in lieu. I therefore give my judgment in favour of the claimant on these two heads of claim by consent.

8. The remaining liability issues the Tribunal had to decide were automatic unfair dismissal by reason of protected disclosure and ordinary unfair dismissal (2a and 2b above).

9. Prior to the hearing the Tribunal was provided with an electronic bundle containing 100 documents and running to 471 pages. The Tribunal was also provided with witness statements from Mr Gary Jones the claimant, Mr Ken Simpson, a witness for the claimant, and Mr Geoff Wood, the MD of the respondent.

10. During the course of the hearing, two further documents were produced by Mr Simpson, namely an email from Mr Simpson to Mr Wood dated 31 March 2016 and a draft letter and proposed commercial agreement prepared by Mr Simpson, both of which were admitted as evidence. The respondent also produced monthly profit and loss accounts for June and August 2020, and year end accounts for 2020/2021 which were also admitted into evidence.

11. It was agreed that the claimant would open his case first.

**FACTS**

12. I find the following facts.

13. The respondent is a limited company based in Manchester which provides equipment and support services to businesses in the hospitality, food and drink sector. The respondent specialises in providing support with drink dispensing systems which include keg couplers and valves.

14. The respondent has been in existence for 35 years and was established by its current MD and majority shareholder, Mr Geoff Wood. The other Director and shareholder is Mr Wood's wife.

15. Mrs Michelle McNulty is a longstanding employee of the respondent of some 30 or so years' service who is currently and was at the material time (March to August 2020), the respondent's Operations Director. Mrs McNulty was, as Mr Wood described, his right-hand woman.

16. The respondent is a company with about 20 employees, and this was the case at the time relevant to this claim (March to August 2020).

17. Mr Wood is not an employee of the company but leads and runs the business with the assistance of Mrs McNulty.

18. The claimant, Mr Gary Jones, joined the respondent as an Account Executive on 2 September 2013. Prior to joining the respondent, Mr Jones had amassed over 30 years of experience of the brewing industry and had a wide network of contacts across the industry. One of the respondent's biggest customers was Molson Coors. Others included Marstons, Innserve, Belhaven, Asahi and Shepherd Neame.

19. It was not disputed by the respondent, and so I find as fact, that from the time the claimant joined the respondent in 2013, its turnover grew from £1.3million to £4 million in 2018.

20. The claimant's role was primarily that of a travelling salesman, using face to face opportunities with clients to sell or demonstrate the respondent's products to customers or potential customers.

21. Before the claimant was recruited to act as the respondent's field salesman, Mr Wood carried out the external sales function for the respondent. Mr Wood said in evidence that he recruited the claimant to take over the external sales role because he (Mr Wood) was not getting any younger. Mr Wood also recognised in 2013 that there was then a greater requirement to promote the respondent's business and it needed to generate more sales, and the external sales role was part of that strategy. Mr Wood also knew of the claimant and his experience, and knew he was available because he had been made redundant from his previous employer, English-Worthside Limited (EWL).

22. At some point after he joined the respondent and before his termination of employment, the claimant's job title was changed to National Sales Executive. The substance of the role remained the same.

23. With effect from 1 March 2019 the claimant entered into a salary sacrifice arrangement with the respondent. Accordingly, the claimant's contract was amended by mutual agreement with the respondent. His salary of £47,271.37 per annum was reduced to £40,260.00, but from that same date the respondent agreed to pay £7011.37 into the claimant's personal pension. This arrangement was executed by the respondent making the agreed monthly salary sacrifice payments into the claimant's pension up to the point he was placed on the government's Coronavirus Job Retention Scheme or "furlough".

24. At no time before the pandemic and the furloughing of staff did the respondent express concerns or doubts about the contribution to the business and value of the field sales function performed by the claimant.

25. On 24 March 2020, Michelle McNulty spoke to the claimant by telephone and informed him the respondent would close until further notice on 26 March 2020 in response to the national lockdown ordered by the government. During that conversation, Michelle McNulty informed the claimant that like other employees of the respondent, he would receive 100% of his salary for 3-months. That is to say, the respondent had agreed to top up the government's 80% of salary payments with an additional 20%. However, the claimant was told that his monthly salary sacrifice contribution would not be paid by the respondent into his pension scheme.

26. Michelle McNulty confirmed in writing on 24 March 2020 that employees of the respondent would be furloughed with effect from 1 April 2020 and that the claimant would not be paid the salary sacrifice element of his contract.

27. On 25 March 2020 the claimant emailed Michelle McNulty challenging the decision not to pay his pension contribution, pointing out that it was in breach of his agreement with the respondent and that he was, in effect, being treated differently to other employees.

28. It was asserted by Mr Jones that during the telephone conversation with Mrs McNulty, when he complained about not receiving the salary sacrifice element of his contract Mrs McNulty told him, in terms, that if he was not satisfied with the respondent's offer, then he could take voluntary redundancy. The respondent elected not to call Mrs McNulty to give evidence. Mr Wood said the decision not to call Mrs McNulty was taken on advice from counsel. Therefore, I find that consideration was given to calling Mrs McNulty as a witness for the respondent who could have been asked to comment on the alleged voluntary redundancy comment. The respondent was advised by experienced counsel and chose not to call Mrs McNulty to rebut Mr Jones' evidence on this point. No evidence was advanced on behalf of the respondent to challenge what Mr Jones had to say about the alleged redundancy comment therefore I find, as a fact, that it was said by Mrs McNulty to the claimant when he suggested that he was being treated differently to others and that his contract was not being honoured. I find that the comment may not have been intended as a threat to the claimant that his

job was at risk if he persisted in challenging the respondent on the issue, it was equally possible that it was meant as a ”take it or leave it” comment, but I do find that it was reasonable for the claimant to honestly believe his job could be at risk if he continued to complain about losing his pension contribution, the word “redundancy” were used .

29. Later on 25 March 2020, Mr Wood emailed the claimant, explaining his wish to help all of his employees to maintain their level of income by making a discretionary top up of their wages. However, Mr Wood did not address Mr Jones’s particular concern about his pension contribution which was part of his salary arrangement and which the respondent ordinarily paid to Mr Jones’s pension provider. Mr Jones responded to Mr Wood by email explaining his position on 25 March 2020, asserting that he was not being treated the same as other employees.

30. The next day, 26 March 2020, Mr Wood emailed Mr Jones, copying in Mrs McNulty. Mr Wood wrote:

*Gary*
*I think a little less bitching and a little more gratitude would be in order*
*The level of top up is solely discretionary*
*You should understand that*
*Geoff*

31. In cross examination, Mr Wood admitted that he used a poor choice of words in his email to the claimant, but his explanation for that choice of words was that the world had just been turned upside down by the Coronavirus pandemic and he alleged the claimant had been very aggressive towards Michelle McNulty in his interaction with her over his salary sacrifices payments. Mr Wood said that Mrs McNulty was a wonderful woman who had been with the company for over 30-years’, and he was disappointed that a member of his staff had to deal with the claimant’s behaviour when he (Mr Wood) believed the claimant was being treated very well. I find from Mr Wood’s evidence that he was displeased and annoyed with the claimant because he was complaining about the amount he, Mr Wood, was going to top up his furlough payment. I find that Mr Wood felt the claimant was being ungrateful to him personally.

32. Although Mr Wood rejected the claimant’s complaint about not receiving the salary sacrifice amount for his pension at the time, he conceded at the hearing that the claimant was entitled to the salary sacrifice payment. I find therefore that when he emailed Mrs McNulty and then Mr Wood on 25 March 2020, the claimant had a legitimate grievance regarding non-payment of his salary sacrifice and that he was treated less favourably than other employees who were paid 100% of their contracted remuneration when he was not.

33. The email sent by the claimant to Mrs McNulty on 25 March 2020 and to Mr Wood on 26 March 2020, in which he set out his reasons why he should be paid an additional sum were written in a restrained, measured and non-aggressive tone. Mrs McNulty could have given evidence on the phone call

between herself and the claimant on 24 March 2020, which I find was the only possible time when the claimant could have spoken aggressively to Mrs McNulty, but Mr Wood, on counsel's advice, elected not to call her as a witness. The Tribunal therefore heard no direct evidence from Mrs McNulty that the claimant had been aggressive towards her and I therefore find that he was not. Because I find that the claimant was not aggressive in his dealing with Mrs McNulty, because there was no evidence from Mrs McNulty asserting that the claimant had been aggressive towards her, and because Mr Wood made no mention of any aggressive behaviour in his witness statement, I find it is more likely than not this accusation was a fabrication, concocted by Mr Wood under cross examination, to excuse what was his own aggressive language towards the claimant in his email of 11:34 26 March 2020, to blacken the claimants' character and thereby undermine his evidence.

34. Mr Wood's email of 11:34 26 March 2020 was curt, aggressive, and I find intended to indicate to the claimant that no further discussion on the subject would be entertained by Mr Wood. I find it is more likely than not that the claimant concluded from Mr Wood's email that he had angered Mr Wood and given the prevailing circumstances at the time, when businesses were closing their doors and the future of his industry was uncertain, I find it more likely than not that the claimant knew it was in his best interests not to further upset Mr Wood.

35. I find as fact, based on the evidence before the Tribunal, that Mrs McNulty was the sole TecFLo employee who was not furloughed and continued to run the business, as best as possible in the circumstances, with Mr Wood, who was stranded in South Africa until sometime in July 2020. I also find that Mr Wood and Mrs McNulty could not run the business by themselves and needed the support of the claimant, which is self-evident from emailed requests from Mrs McNulty to the claimant.

36. I find on Mr Wood's own evidence that he continued to run the respondent company remotely from South Africa and was able to do so by phone and email. By his own admission Mr Wood was a very "hands-on" MD. Mr Wood had a good and longstanding relationship with Mrs McNulty, his Operations Director. In cross examination Mr Wood said he was in daily contact with Mrs McNulty in May and June 2020, mainly by phone, and he knew on a daily basis the direction the company was moving in.

37. Emails produced in evidence show that Mr Wood maintained situational awareness of what was going on within his company and across the sector, and that he personally issued direction to Mrs McNulty and to the claimant when he was on furlough. I find that during the furlough period, up to the point the claimant was dismissed, Mr Wood remained in charge of the respondent company and exercised control through Mrs McNulty or directly to staff. Mr Wood did not assert otherwise in evidence.

38. I find that the claimant continued working for the respondent after the time he should not have been working because he was in receipt of furlough

payments. This is clear from emails and other documents adduced in evidence.

39. At page 139 of the bundle of documents is a copy of an undated memorandum from Mrs McNulty informing customers that TecFlo would cease operations until further notice on 26 March 2020 but told customers and suppliers that they could still contact the respondent using the respondent's "normal routes" and that the respondent's administrative and lines of communication would remain in place during the shutdown. Mr John put it to Mr Wood that as far as customers were concerned, the claimant was the usual point of contact and therefore it was foreseeable that they would continue communicating with the claimant whilst he was on furlough. Mr Wood was reluctant to concede the point to Mr John, first answering that his customers were on furlough themselves and he was not sure who would be contacting the claimant. Mr Wood then accepted Mr John's proposition that if customer's usual point of contact was the claimant, they would continue to contact him in response to Mrs McNulty's memorandum but added that the claimant should have turned his phone off.
40. Mr Wood repeated the assertion that the claimant and three other furloughed employees (the administrator Jessica Griffiths, the purchasing manager and her assistant), should have turned their phones and laptops off and not responded to work calls and work emails. Mr Wood conceded to Mr John that neither he nor Mrs McNulty issued any guidance to the claimant or other employees that they were not to carry out work on behalf of the respondent whilst on furlough, which included communicating with customers or suppliers. Mr Wood also conceded that no measures were put in place that would have diverted phone calls and emails from furloughed employees to Mrs McNulty who was the only employee entitled to work on behalf of the respondent at the time.

41. I find Mr Wood's repeated assertion that the claimant and three other employees acted entirely on their own initiative and not under his direction or without his knowledge and approval, to be an active attempt to divert blame from himself. As Mr Wood said in evidence, he was in daily contact with Mrs McNulty, he retained hands on management of the company and knew what was going on within the company. I find that it is more likely than not that the claimant and the three other employees dealt with phone calls and emails because Mr Wood expected them to do so, and they knew he expected it of them in light of the respondent's memo to customers and suppliers indicating that normal routes and lines of communication were open; and they were those normal routes and lines of communication. Without clear contrary direction from Mr Wood or Mrs McNulty, it was a reasonable assumption for employees to make that they were required by the respondent to carry on communicating with customers and suppliers.

42. The email chain at pages 140 and 141 of the bundle shows that on 27 May 2020 the claimant was carrying out work on behalf of the respondent and that the respondent's Operations Director, Michelle McNulty, knew he was so working. The email of 19:15 27 May 2020 records that the claimant had taken a call from a customer, Stewart Parr at Booths, and that the claimant was

assisting Mr Parr with a problem of cracked Ecoflo FOB detectors. The claimant relayed that information to Mrs McNulty who instead of telling the claimant to stop communicating with the customer, asked him for further information about the customer's problem. I find this demonstrates that the claimant was working with the respondent's knowledge and direction.

43. I find that the email chain at pages 142 to 145 proves that the claimant was working on behalf of the respondent and was not only working with Mr Wood's knowledge but was working on his direct instruction. I find that the same email chain shows that the claimant was playing an important role and making an important contribution to the respondent's business at a very difficult and precarious time for the respondent and the drink and hospitality sector. The claimant was performing the function he was recruited for, in particular he was drawing upon his network of contacts in the industry. He learned on 28 May 2020, through a contact at Belhaven, that a competitor and the claimant's previous employer, EWL, had "gone bust". The claimant communicated this information to the respondent, seemingly to Mrs McNulty, who evidently passed on the news to Mr Wood. At 11:01 29 May 2020 Mrs McNulty emailed the claimant and told him that Mr Wood was keen to take advantage of EWL's situation by contacting as many of EWL's customers as possible in an effort to win their business. I find that Mr Wood personally directed the claimant to work in his role as National Sales Executive by telling him, via Mrs McNulty, that he wanted the claimant to make contact with EWL's customers quickly, before TecFlo's competitors did.

42. At 12:33 on 29 May 2020, the claimant emailed Mrs McNulty, copying in Mr Wood, telling them both that his phone had been busy all morning in relation to work matters and EWL's liquidation. The email reveals that the claimant had gained a good deal of commercial information from his customers or contacts about the state of their market and possible demand for the respondent's products. I find this is further unequivocal evidence which proves on the balance of probability that the claimant was working for the respondent on that date and proves that he was adding value to the respondent's business at a particularly difficult time for the respondent. I find that the claimant was a key employee at that time on whom Mr Wood and Mrs McNulty were heavily dependent because of his personal relationship with customers and others across the brewing industry. I find that the claimant was a highly valuable asset to the respondent at that time because instead of telling him not to speak to customers, Mrs McNulty and Mr Wood both told him to do so rather than do it themselves. I find that because of the obvious reliance placed on the claimant by Mr Wood at that time, Mr Wood saw the field sales role performed by the claimant as very important and not dispensable as he claims in his evidence.

43. At 12:05 and 12:27 South Africa time on 29 May 2020, Mr Wood emailed the claimant directly. I find those emails are unambiguous instructions from Mr Wood to the claimant to perform his role as a salesman for the respondent and to secure orders for the respondent. I find this evidence directly contradicts Mr Wood's oral evidence that if the claimant did work in breach of the furlough scheme, then he did so on his own initiative and not on orders from the respondent or him (Mr Wood) personally. I find that the emails from Mr Wood show that he was an untruthful witness.

44. I find that the 12:05 and 12:27 emails reveal Mr Wood's character and personality. I find the emails show Mr Wood was impatient and frustrated, and somewhat irked by the claimant's earlier emails. The claimant was passing on detailed commercial "intelligence" which I find must have been valuable to the respondent. However, Mr Wood's emails and his direct intervention in place of Michelle McNulty, I find shows that he was demanding immediate action from the claimant. I find that Mr Wood instructed the claimant to go and secure orders for the respondent without delay. I find that the impatient and very direct tone of Mr Wood's emails shows that he was not a man to be challenged or to argue with. The claimant did not respond by telling Mr Wood he could not go out and secure orders because he was on furlough, instead he asked (at 2:44) what I find to be a reasonable and temperate question which was whether he was, from that point, back at work and off furlough.

45. I find that at 13:30 on 29 May 2020, Mr McNulty responded to the claimant's question by telling him he was still furloughed and that any stock enquiries should be directed to the respondent. I find that Mrs McNulty's email contradicted earlier direction given to the claimant by her and by Mr Wood. I find that the claimant's direct question about coming off furlough caused both Mr Wood and Mrs McNulty to take stock of their work demands of the claimant and confirmed that he was still on furlough, but I find Mrs McNulty's email did not countermand Mr Wood's instructions to the claimant to bring in orders. The email did not tell the claimant to stop all work on behalf of the respondent and implies that he was to carry on as a point of contact by acting as a conduit between customers and the respondent. I find the fact that communication reverted from Mr Wood to Mrs McNulty after the claimant's question about furlough, and Mr Wood's silence at that point, indicates that Mr Wood realised that had been "called out" (as Mr John put it) on the fact the respondent could not have it both ways. It could not expect the claimant to work on behalf of the company while at the same time taking furlough money from the state to pay the claimant's wages.

46. I find it more likely than not that Mr Wood directed Mrs McNulty to respond to the claimant's question about coming off furlough because the question was asked in response to his instructions to the claimant to bring in orders. I also find that Mrs NcNulty's email was deliberately vague in that whilst it told the claimant he was still on furlough, it did not tell him to cease carrying out work of the kind he had been doing up to that point. I further find that the email was intentionally vague because the respondent wished to continue getting the benefit of the claimant's work. I find this is evident from the fact that less than a week later, on 4 June 2020, Mrs McNulty wrote an email to a customer, Rowan Dernley of Greene King, that the claimant would contact Mr Dernley shortly to deal with Mr Dernley's request to purchase coupling heads. The emails of 4 June 2020 show that the claimant was still working at the respondent's behest.

47. I find also that a series of other emails on 4 June 2020 involving the claimant and Mrs McNulty, some of which were copied to Mr Wood, prove that the

claimant was working for the respondent with Mr Wood's and Mrs McNulty's knowledge and on their direction.

48. I find that the email evidence proves that the claimant was working in his sales capacity until 23 June 2020. On 18 June 2020, a customer, Wayne Chandler, emailed Mr Wood a question about what kit TecFLo supplied to Greene King. Mr Wood responded the same day, referring Mr Chandler to the claimant and Mrs McNulty, adding by postscript that Mr Chandler should speak to the claimant about the respondent's range of snap fittings. I find that email from Mr Wood proves the claimant was still working routinely for Mr Wood and specifically on Mr Wood's direction.

49. I find from emails sent by Mrs McNulty to the claimant on 17 and 23 June 2020 that Mr Wood wanted the claimant to contact Westons Cider, in his sales capacity, for the purpose of securing business from Westons Cider. The claimant answered Mrs McNulty's second email, on 23 June 2020, telling her he had not been in contact with Weston's Cider. I find that Mrs McNulty must have then forwarded the claimant's response to Mr Wood, who then emailed the claimant at 11:13 23 June 2020, asking the claimant to call Westons immediately and to inform him (Mr Wood) of the result. I find that Mr Wood's email was abrupt and brusque in tone because it lacked the usually polite salutation to the recipient and valediction. I find that this email and his similarly terse email at 1:03pm South Africa time on 23 June 2020 indicates that Mr Wood was displeased with the claimant because he had not fulfilled Mr Wood's wish that the claimant contact Westons. The claimant's email to Mr Wood at 13:29 was similarly abrupt when he wrote that he would get on to Marston's when he got back to work. I find that the emails suggest a strain in the relationship between Mr Wood and the claimant at that time. This point was not argued as part of either side's case, however I find this as a fact from the email evidence and the tone and brevity of the same.

50. Because neither party asserted that relations between Mr Wood and the claimant were strained at that time, no reason for that was offered. However, I find it is more likely than not that the claimant had become increasingly unhappy with the respondent because he was being required to work when he should not have been and he was being treated less favourably than other employees, some of whom were not required to work at all yet were receiving 100% of their contractual remuneration entitlement.

51. I find that at 14:37 on 23 June 2020 the claimant emailed Mr Wood pointing out that he was not permitted to contact Westons and would do so only when he was back at work.

52. Mr Wood replied to the claimant's email at 14:15 South African time that same day, agreeing with the claimant that he was not allowed to carry out any tasks on behalf of the company. I find that Mr Wood correctly stated the position, which was that the claimant was not allowed to carry out any tasks for the respondent, but I find that Mr Wood had directly and indirectly instructed the claimant to carry out tasks for the company when he knew to do so was in breach of the furlough scheme. I find that Mr Wood only conceded that the

claimant should not be working when he was directly challenged on the point by the claimant. I find that unlike Mrs McNulty's email to the claimant on 29 May 2020, Mr Wood's email was unequivocal agreement that the claimant should not be doing work for the respondent.

53. I find that the claimant's email to Mr Wood at 14:37 was in reality an ultimatum to Mr Wood, in terms that he would not carry out any more work for the company until he was taken off furlough and allowed to resume work routinely, openly and in accordance with his contract of employment. I say openly because the claimant had clearly been working for the respondent when he should not have been up to that point. Taking all of the facts and circumstances into account, I find it more likely than not that true meaning of the claimant's email to Mr Wood was, in terms, "I will not carry out any more tasks for you until you take me off furlough and restore my full salary and pension contribution." I find that it is more likely than not that Mr Wood was highly displeased by such a challenge to his authority.

54. I asked Mr Jones why from early July 2020 he started to forward emails from his work email account to his personal email account. In answer he said he did so because at that time he felt threatened by the respondent and decided he had to start keeping evidence of communication between himself and the respondent in case his laptop was shutdown. I find that the claimant began keeping a record of his communication with the respondent because of a deterioration in his relationship with the respondent and with Mr Wood in particular. Consequently, I find that the claimant feared his job was at risk because he had challenged Mr Wood about his salary sacrifice not being paid and about working on furlough.

55. The claimant, in his witness statement (paragraph 29), asserted, in terms, that Mr Wood was not a man who accepted his decisions or methods being questioned. The claimant asserted that he had witnessed Mr Wood give an order that an employee called Richard, who was serving a probationary period with the respondent, be dismissed with immediate effect. The claimant asserted Mr Wood gave that order because Richard had questioned Mr Wood about tap production. The claimant further asserted that Richard's partner complained to the respondent about his dismissal and that it was wrong, and to avoid further complaint or action, Mr Wood effectively paid Richard off with an additional week's wages. In oral evidence that incident was put to Mr Wood who denied any wrongdoing. He said Richard was serving a probationary period which allowed Richard to decide "if he liked us" and "for us to decide if we liked him." Mr Wood then said, "We didn't like him" and after a pause added "There were performance issues."

56. Mr Wood did not expand or explain what the alleged performance issues were. It was asserted by the claimant that Mrs McNulty was present when this incident occurred. Contrary to what was suggested by Mr Lewis, I find that Mrs McNulty was a person capable of giving relevant evidence on a number issues, such as this one. She was not called, and I reject the suggestion that she was not able to give evidence which might assist the tribunal, when she was clearly enmeshed in the factual matrix of this case. I

therefore draw the inference that it was a tactical decision by the respondent not to call Mrs McNulty because she was not in a position to support the evidence of Mr Wood. Overall, I found the claimant to be the more credible witness and I find it more likely than not that the claimant did witness Mr Wood order Richard's summary dismissal. From this evidence and from the abrupt and intemperate emails sent to the claimant, and from the manner in which Mr Wood behaved towards Mr Simpson, which I will refer to below, I find that Mr Wood was an autocratic leader who regarded TecFlo as his personal fiefdom and would not permit his authority to be questioned. I find that Mr Wood was a man prone to making snap judgements on matters concerning his company and without consultation.

57. Mr Simpson, a professional acquaintance of the claimant, gave evidence in his support. The relevance of Mr Simpson's evidence, so far as it went to the issues in this case, was questioned by Mr Lewis. I find that whilst Mr Simpson's evidence did not go directly to the primary issues in the case, it was relevant to the issue of character and credibility. Mr Simpson was introduced to the respondent by the claimant. Mr Jones and Mr Simpson had known each other professionally for a number of years. Mr Simpson is an engineer, and in 2014 became involved with the respondent after learning from technical staff at Molson Coors, one of the respondent's main customers, that Molson Coors were interested in adopting a new safety coupler in place of standard couplers. Mr Simpson met with Mr Wood and it was agreed Mr Simpson would design a safety coupler for the respondent. Mr Simpson went on to design the safety coupler for the respondent. Mr Simpson estimated that in doing so it cost him about £15,000 in terms of his time and travel. In February 2017, after the valve was designed and developed, Mr Simpson and Mr Wood met again over lunch and a deal was struck between the two men. It was agreed that the respondent would pay royalties of 3.5% on each coupler sold by the respondent. This agreement was confirmed by email on 15 March 2017. Attached to that email was a draft written agreement intended to confirm the 3.5% royalty deal and in it, Mr Simpson estimated sales of his coupler would be 10,000 per annum, resulting in an annual royalty payment of £6,300 per annum.

58. However, on 31 March 2017, Mr Wood called Mr Simpson to a meeting. At that meeting Mr Wood told Mr Simpson that he would not honour their verbal agreement and instead, the respondent would make a one off, final payment of £10,000 to Mr Simpson for his product. Mr Simpson was very upset by Mr Wood's refusal to honour their agreement and refused the revised offer.

59. In evidence, Mr Wood explained why he changed his mind about the agreement with Mr Simpson. He said he became less optimistic about the product which, he said, turned out to be a flop with only 520 units sold. His main concern, he claimed, was that he felt very uncomfortable about sharing commercial information about the respondent's business with a third party, which he had never done before. I asked Mr Wood to clarify his meaning on this point and in shortform he said the commercially sensitive information he did not want to reveal to Mr Simpson was how many couplers the respondent would sell to its customers. I find Mr Wood's assertion that he backed out of

the agreement because of concerns about disclosing sensitive commercial information to Mr Simpson to be incredible. The only information that would be disclosed to Mr Simpson (by Mr Wood's admission) was the number of couplers sold, in order to determine the size the royalty paid to Mr Simpson. I find that such information would be of little or no commercial value and would give no genuine cause for concern to Mr Wood. In the respondent's line of business, I find it is surely the case that suppliers and customers have knowledge of the number of particular items bought or sold by the respondent, and the arrangement with Mr Simpson was essentially no different. I find that Mr Wood did not have a genuine concern about sharing such information with Mr Wood.

60. As for Mr Wood's assertion that he suddenly lost confidence in the product, which turned out to be a flop, I reject that too for the following reasons. It was true that Molson Coors changed its mind on the use of a safety coupler and demand for Mr Simpson's product did not materialise as a result. However, Mr Wood accepted that on 31 March 2017, when he told Mr Simpson he would not honour their agreement, Molson Coors had not indicated its change of requirement and it was not known to Mr Wood at that time. I find therefore that at the time Mr Wood changed his mind on what should be paid to Mr Simpson, he had no reason to think sales of the safety coupler would not be as Mr Simpson predicted. I also find that Mr Wood's offer of a one-off payment of £10,000 was not consistent with his alleged concern about the product having little or limited sales potential. I therefore find that at the time, Mr Wood still believed the product was commercially viable and potentially very profitable, and on reflection wished to increase his profits from Mr Simpson's product. I find that Mr Wood was motivated by financial gain to renege on the deal with Mr Simpson. I find that the episode with Mr Simpson indicates that Mr Wood is a hard-nosed, uncompromising businessman who is willing to act unfairly, without discussion, when he feels it suits him.

61. Financial information was produced by the respondent. I find that the profit and loss accounts produced for April to August 2020 show that the respondent was in the process of steady recovery with sales increasing month on month to the point the claimant was dismissed. In April 2020 sales were at zero, due to the recently imposed lockdown. In June 2020 product sales were £123,419.18. In August 2020 product sales had increased to £283,833.09. The Respondent did not provide the profit and loss account for July 2020, but by extrapolating from the Year-to-Date figures for June and August 2020 the product sales figure for July 2020 must have been £162,396.21. As the respondent's only dedicated salesman I find that the claimant must be credited with generating a significant proportion of sales recorded in the June to August 2020 figures (noting that the August sales figures would reflect a degree of interaction with customers in July, before the claimant's employment was terminated).

62. Under cross examination, Mr Wood asserted that at the time he dismissed the claimant his business was doing badly and would continue to do so for some time. He asserted that his prediction had proved to be correct and at the present time the respondent's "numbers" were still at no more than 60% of its

numbers for 2019. Mr Wood was asked if he was prepared to disclose financial information to support his assertion regarding the current state of the respondent's business. On the morning of 27 May 2022, the respondent provided its Year End Accounts for 2020/2021 (up to 28 February 2021). When I asked if Mr Wood could produce the same for 2022, it was suggested by Mr Lewis that the latest End of Year Accounts had not yet been made up. Mr Wood accepted in cross examination that he could readily access financial information from the respondent's computer system or accounts software, and I asked if the respondent would produce up to date figures to support his assertion that the respondent was still well short of its pre-pandemic sales figures. I was informed that the respondent did not feel it necessary to produce any further financial information to the Tribunal in support of its assertions. Mr Wood actively sought to rely on sales and profit and loss information in his witness statement to support his reasons for doing away with the claimant's role. Further information was provided at the request of the Tribunal which shows that the respondent's sales were recovering. I find therefore infer from the respondent's unwillingness to produce available financial information that Mr Wood's evidence about the current state of the respondent's business and its recovery is unreliable.

63. From the accounts provided by the respondent, I find that in 2020 the Directors of the respondent company drew a dividend of £176,221. I find that in 2021 the Directors of the respondent company drew a dividend of £241,385.

**THE LAW**

64. The relevant law is to be found in the Employment Rights Act 1996 ("*the ERA*") at:

Section 94

(1) *An employee has the right not to be unfairly dismissed by his employer.*

Section 98

(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 it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(2) *A reason falls within this subsection if it—*

(a) *relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*

(b) *relates to the conduct of the employee,*

(c) *is that the employee was redundant, or*

(d) *is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

Section 103A

*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.*

Section 43A

*In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.*

Section 43B

(1) *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,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

63. Counsel helpfully referred me to a number of authorities which included *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837, *Parsons v Airplus*

*International Ltd* UKEAT/0111/17 (13 October 2017, unreported), *Kuzel v Roche Products Limited* [2008] IRLR 530 and *Ladbroke Courage Holidays Ltd v Asten* [1981] IRLR 59, EAT.

## APPLYING THE FACTS TO THE LAW

### Automatic Unfair Dismissal

64. In submissions, Mr Lewis invited the Tribunal to consider a number of sub-issues when considering the alleged automatic unfair dismissal and I adopt that approach in making my determination of that issue.

65. The claimant relies on two emails which he says amount to protected disclosures. The first (PD1) sent to Mrs McNulty on 29 May 2020 and the second to Mr Wood (PD2) on 23 June 2020.

66. On 29 May 2020 Mr Wood was urging the claimant to start selling the respondent's products. The claimant, at 12:44 that same day, sent the email which Mr Lewis refers to as PD1. In it the claimant asked, "*So from now on, am I off furlough and is my pension salary sacrifice reinstated and will it be paid at the start of June?*".

67. On 23 June 2020, at 14:37, after being directed by Mr Wood to contact Westons Cider, the claimant wrote "*Surely I am not allowed to contact them while on furlough, will contact them when I am back in work*."

68. The sub-issue in Mr Lewis's submission was whether the two emails amounted to the disclosure of information. Mr Lewis contended that PD1 and PD2 fell short of being disclosures of information because they lacked sufficient information and specificity. I disagree with that contention. The claimant adopted an indirect form of words, but the meaning of his emails and the information conveyed to the respondent is clear. The claimant was reminding Mrs McNulty and Mr Wood that he was on furlough and that he was being asked to work when on furlough, which was not permitted.

69. Taking Mr Lewis's sub-issues out of turn, Mr Lewis accepted that disclosure was made in accordance with subsections 43C and 43H of the ERA as both emails were to the claimant's employer.

70. Mr Lewis contended that the claimant did not have a subjective belief that the information he disclosed tended to show either that a criminal offence has been committed, is being committed or is likely to be committed, or that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. I disagree with that contention because it is clear that the claimant was reminding the respondent of its legal obligation not to engage its employees in work whilst on furlough. The claimant alerted the respondent to the fact he was being asked to do something which was not in compliance with its legal obligation. The claimant must have believed that was the case if he alerted the respondent to it and his belief was reasonably held because he

knew that working on furlough would breach his and the respondent's legal obligation under the government's job retention scheme.

71. The final sub-issue is whether or not the claimant reasonably believed the disclosures were made in the public interest. I find that the disclosures were not made in the public interest but out of personal interest. The case of *Chesterton Global Ltd v Nurmohamed* states that public interest need not be the sole reason or motivation for disclosure. Whilst I accept there is an obvious public interest in an employee alerting his employer that he is being asked to break the law, on the facts of this case I find that the claimant was not motivated by the public interest to any degree. Whilst public benefit may have been the consequence of the disclosure, I find it was not an intended consequence. I find the claimant was unhappy about being asked to work on furlough because he was worse off financially than when he was working prior to being put on furlough. In effect, the respondent had been employing the claimant on the cheap for a number of weeks and months prior to the disclosures and I find he was becoming increasingly more disgruntled at what he believed, correctly, was an infringement of his employment contact.

72. Because I find that the claimant did not have any belief that his disclosures were made in the public interest, I find that the claimant was not automatically dismissed contrary to Section 103A of the ERA.

73. I also find that it is more likely than not that the disclosures were not the reason or the principal reason for the dismissal for the reasons given below for my findings on the ordinary unfair dismissal issue.

**Ordinary Unfair Dismissal**

74. In determining whether the claimant's dismissal was fair it is for the respondent to show the reason and that such reason falls within subsection 98(2) of the ERA or was for some other substantial reason. The respondent asserts that the reason was redundancy.

75. For the reasons set out below I find that redundancy was not the real reason for the claimant's dismissal and that there was no genuine redundancy situation in the claimant's case.

76. Mr Wood asserted that he, as the MD and person in sole charge of the business, made the decision to make the claimant redundant. He asserted that the decision was not driven by malice or animosity, but purely for legitimate business reasons. His reasons for making the claimant can be concisely summarised. Because of the national lockdown imposed on 26 March 2020, the respondent had to shut down and all selling stopped temporarily, then resumed on a much-reduced scale. Mr Wood believed the company was at serious financial risk and he had to consider and take measures to protect the business. Because of the lockdown and later restrictions, face to face selling was not possible and because the National Sales Executive's role was a field-based role, which involved face to face interaction with clients, the need for the role had diminished and could no longer be justified.

77. Mr Wood asserted that he considered alternatives roles the claimant could fill within the company but decided there were none on the basis there were no vacancies within the company and the claimant had a very narrow skillset, having been employed purely as a salesman for over 30 years.

78. Mr Wood said that part of his thinking was that the respondent company had done without a field salesperson for 29 years prior to the claimant joining the company (although if the company is 35 years old as Mr Wood indicated, and the claimant was recruited in 2013, then the respondent must have been without an external salesperson for about 26 years). I find that Mr Wood's evidence on this particular point was misleading and intentionally so. I find this was one of a number of examples in Mr Wood's evidence of attempts to minimise the value of and the contribution made to the business by the claimant and the National Sales Executive role.

79. In response to Mr Wood's repeated comment that the company had done without a field salesperson for 29 years, I asked him who went out into the field to sell to clients face to face or to demonstrate the respondent's products. Mr Wood conceded that he personally performed that function. I find therefore that the respondent did have a field salesperson before the claimant was recruited, who happened also to be the company MD.

80. I find Mr Wood's evidence to be contradictory. He insisted that part of his thought process was that the company could do without a field salesperson because it had done perfectly well without one for first 29 years of its existence, but that was not the case in fact because Mr Wood was selling face to face during that time. As his business grew and as he got older, Mr Wood recruited the claimant into the role. Mr Wood recruited the claimant because of his reputation, track record and availability. I find Mr Wood to be an astute businessman who recognised that to expand his business he needed to enhance the selling arm of the business with an experienced and dedicated salesman.

81. I find that the value of the field sales role was proved by the increase in sales from the time the claimant was recruited in 2013 to 2018. I also find that up the point of the pandemic and the lockdown, Mr Wood had no doubts about the value and the efficacy of the National Sales Executive role and no doubts about the claimant's performance. No evidence was led which suggested the respondent questioned the need for the role or the claimant's ability to fill it.

82. The critical and driving factor behind the redundancy, according to Mr Wood, was the pandemic. In shortform, the lockdown and consequent Covid restrictions, meant the claimant could not perform his sales role in the field, according to Mr Wood. The claimant's position had become redundant according to Mr Wood and a luxury he could not afford at a time when the company was performing badly.

83. Mr Wood said that the role was no longer viable because field-based activity had ceased completely and face to face contact with customers, the

fundamental requirement of the role, was not possible. I do not accept Mr Wood's alleged reasoning for his decision to terminate the role because it is transparently flawed. The reason why the claimant could not perform his face-to-face role in the field was down to a single factor, which was the pandemic. Whilst I accept that how long the pandemic would interfere with normal business was not known at the time, Mr Wood must have known that normal business would resume at some point which would allow the claimant to revert to external selling.

84. Mr Wood asserted that he had been rethinking the efficacy of the field-based sales role for a number of weeks or months prior to his decision to terminate it, but I find there is no evidence to suggest that Mr Wood had doubts about the role outwith the pandemic scenario, which was extraordinary. I find that Mr Wood believed there was value in the role, because he created it, he recruited the claimant into it, and had no complaints about his performance.

85. No documentary evidence, such as emails, were produced to support Mr Wood's assertion that that he had given careful consideration to how best future proof his business or that he had doubts about the value of the external sales role. I find that if Mr Wood genuinely reviewed the National Sales Executive's role as claimed there would have been some email traffic between himself and his Operations Director. Even if Mr Wood was unwilling to seek advice or consult with Mrs McNulty, she would at least need to be told of Mr Wood's decision and he would more likely than not have told her the reason. The fact that no supporting documentary evidence which records Mr Wood's assessment of the situation and the time and his reasons for making Mr Jones redundant, save for the redundancy notice itself significantly undermines the assertion this was a genuine redundancy situation.

86. I also find that the failure to call Mrs McNulty to give evidence undermines the assertion that the role had become redundant. If it was a true redundancy scenario, Mrs McNulty must have had some discussion with Mr Wood about it at the time and could repeat those discussions in evidence. I draw the adverse inference from her absence that Mrs McNulty has no such supporting evidence to give and that Mr Wood has been untruthful on this point.

87. Mr John put it to Mr Wood that if he had genuine worries about the company due to the pandemic and was thinking about reducing its headcount and salary liability, then the logical thing to do would be to make the most of the furlough scheme for as long as possible, wait to see if business picked up and then make a decision on redundancies. Mr Wood rejected that suggestion. He said after "3-months of numbers" he knew he had to take the action he did and the obvious solution to easing the company's difficulty was to get rid of its external sales capability. I reject Mr Wood's explanation as I find it completely illogical and counterintuitive, contradictory with how the company was operating and performing at the time, and with the part played by the claimant, which was key to the respondent's business.

88. The disruption caused by Covid-19 was temporary and I find it more likely than not that Mr Wood knew it would be temporary. The recovery and success of

the business was entirely dependent on sales. This requires no explanation because it is an elementary commercial fact for a business of the respondent's kind. Notwithstanding that, Mr Wood prayed in aid the respondent's sales figures which demonstrate just how important the sales arm of the business was and is.

89. Mr Wood attempted to minimise the part played by the claimant in the respondent's survival and recovery. He prayed in aid figures from April and May 2020, which showed sales to be non-existent. But it was only on the Tribunal's request that later figures were produced which showed a significant increase in the respondent's sales in the period June to August 2020, which although not at pre-pandemic levels, demonstrate a month-on-month improvement and recovery. From Mr Wood's unwillingness to produce the respondent's latest end of year figures for 2021/2022, after asserting the business's performance was still only at 60% of what it was pre-pandemic, I find it more likely than not that respondent is in a stronger position financially than Mr Wood maintains.

90. Given the financial information which shows obvious signs of rapid recovery from the April 2020 low point and the fact sales were key, I do not accept Mr Wood's assertion that he dismissed the claimant because he had decided the field-sales role was no longer commercially viable. It was said that as the MD, Mr Wood was the only person entitled to exercise discretion when it came to identifying posts for redundancy. I find that Mr Wood was a very astute businessman. That must be the case having built up a successful company over 35 years. I therefore find that an astute businessman such as Mr Wood would not have made such a dramatic and potentially harmful decision to eliminate his company's external sales capability and to lose a senior employee, with a wide and trusting network of contacts in the brewing industry at a critical time, when there was no urgent need for him to do so at that time.

91. At the time the claimant was made redundant, the government, not the respondent, was paying the bulk of his wages. Before the pandemic, the respondent was paying the claimant £3939 gross per month. From 1 April 2020, the respondent ceased paying the claimant's salary sacrifice of £584 and was able to claim £2500 as furlough payment. By my reckoning, the respondent was only paying the claimant £855 gross per month. Even if I have applied an incorrect formula and the amount paid monthly by the respondent is incorrect, the claimant was making a substantial saving on the claimant's wage bill. The claimant was costing the respondent very little which I find contradicts Mr Wood's assertion that there was a genuine financial need to let him go when he did.

92. At the time Mr Wood made the decision to dismiss the claimant, I find that Mr Wood was not as pessimistic about his company's future as he claims. I have referred to the obvious recovery in sales, but I also refer to the fact that sizeable dividends were taken by Mr Wood and his wife at the end of the financial year 2020/2021. In 2019/2020 the respondent's directors (Mr Wood and his wife) took a dividend of £176,221 after pre tax profits of £923,046. In 2020/2021, the directors took a dividend of £241,385 after pre tax profits of

£196,021. Clearly 2020/2021 was a poor year for TecFlo, as it was for most business in the UK, yet Mr Wood and his wife, as the sole shareholders, were content to take a substantial dividend which was far greater than that taken in the much more profitable preceding year.

93. Mr Wood and Mr Lewis contended that taking such a large dividend was not inconsistent with Mr Wood's very gloomy description of the respondent's fortunes, for example it was said the dividend was drawn from longstanding assets such as money in the bank. However, I reject that contention made by Mr Wood and on his behalf. If the respondent was in such a perilous state financially as claimed by Mr Wood and if he genuinely believed the company would not recover quickly and without the need to cuts jobs, I find it highly unlikely that he would have paid himself and his wife such a substantial dividend in 2020/2021; indeed significantly more than in the very profitable previous year. I find therefore that Mr Wood was confident that his business was sound and would survive the effects of the pandemic. I find that Mr Wood was untruthful in his assertion that his gloomy predictions made at the time he dismissed Mr Jones have proved to be correct and I find he was untruthful as part of a fabric lies to excuse his dismissal of the claimant.

94. The claimant was one of a handful of TecFlo employees working during the lockdown. Aside from the claimant, they were Mrs McNulty, who was not furloughed, Jessica Griffiths the administrator, and the purchasing manager and her assistant. Mr Wood knew his furloughed employees were working for the respondent when they should not have been. Mr Wood attempted to blame those employees for working out of choice and without his direction to do so. He said it was their fault for not turning their phones and computers off. That assertion was patently false. As soon as he became aware the rules were being broken, he should have issued an immediate order to stop, but he did not, which I infer means staff were working at his behest.

95. Various emails lead in evidence show that Mr Wood was aware of what his employees were doing and give examples of when he personally directed the claimant to do work for the respondent. I find this is further evidence of Mr Wood's willingness to lie in order to defend this claim.

96. I find Mr Wood knowingly broke the furlough rules because it suited him. Understandably he had to ensure that essential work was done, and that customers' needs were met as far as possible. He kept Mrs McNulty in work and off furlough for that purpose. But it was evident from the emails produced that the nature of the enquiries coming into the respondent and the worked entailed was beyond Mrs McNulty's knowledge and experience. She and Mr Wood were reliant upon the claimant, his knowledge, experience and contacts, to get the work done, but Mr Wood was not, I find, prepared to pay the claimant's full wages and the full wages of the three other furloughed employees when the government was heavily subsidising them. I agree with Mr John's proposition that Mr Woods was happy to have the best of both worlds.

97. I find Mr Wood's willingness to deceive the revenue (which I find he clearly did) is further evidence that he is prepared to be untruthful when it suits him, which undermines the credibility of his evidence further.

98. The email evidence, specifically the tasks the claimant performed during the period from 1 April 2020 to termination of his employment on 27 July 2020, shows that he was actively performing sales related tasks. Whilst he was not permitted at the time to have face to contact with customers, he maintained regular contact with customers by phone and by email. I find that if the claimant was the most dispensable employee the respondent had at the time, as Mr Wood claims, then the claimant would not have been working and certainly not working as much as he was. The majority of the respondent's employees were on furlough and not working at all. The claimant was working because Mr Wood needed him to work. I find that the claimant was key to continuity and the recovery of the respondent's business, and Mr Wood knew that was the case.

99. Mr Wood and Mrs McNulty relied heavily on the claimant. It was the claimant who learned from his contacts that a major competitor, EWL, had ceased trading and that there was a potential gap in the market that the respondent could exploit. Without information such as this gained from the field (albeit remotely), the respondent would have been at a disadvantage. The claimant also demonstrated that his role was adaptable and that restrictions preventing in person meetings with customers did not hinder him completely as he continued to engage with customers and colleagues remotely.

100. For all of the above reasons I find that Mr Wood did not genuinely believe that the National Sales Executive role had become unjustifiable because of the pandemic. I find that it was a role which was in reality very important to the respondent's business during the first lockdown, and I find that the respondent relied heavily on the claimant. I therefore find the claimant's dismissal was not a genuine redundancy situation.

101. I find the fact the claimant was not consulted at all prior to being given notice of termination and the fact he was denied an appeal, is further evidence that this was not a genuine redundancy. Mr Wood said he did not consult with the claimant because nothing the claimant would say would have made any difference to the decision. I find this is true, but not for the reason given by Mr Wood, which is that he had considered if there were alternatives to redundancy and found none. I find that Mr Wood simply did not want the claimant in his company anymore, had decided to terminate his employment for personal reasons and no amount of discussion would change his mind.

102. Whilst the pandemic may have altered the manner in which the claimant performed his role, for example with greater emphasis on internal sales and remote meetings, I am not persuaded his role was redundant. Mr Wood asserts that the external sales role has not been revived and that the respondent has adopted a more reactive, internet-based model. No evidence was introduced to support that assertion and I found Mr Wood was not a

witness of truth, but I find that even if the respondent has adopted a different operating model, it must sell in some form or another, and I find that the claimant proved his worth to the respondent during the first 4 months of the lockdown and did so internally by phone and email.

103. The decision to terminate the claimant's employment was sudden and without warning, but the claimant suspected something was afoot because he began saving emails as evidence of what was going on at the time.

104. Mr Wood explained why he took the decision when he did and why he did not delay the redundancy decision to see how things played out in the brewing and hospitality sectors and while he enjoyed the support of the furlough scheme. I have rejected his assertion that he took the decision when he did because his assessment of the market was pessimistic, and he saw no future for a field salesperson. Instead, I find the decision was a sudden one because he was reacting adversely to the challenge to his authority made by the claimant on 23 June 2020.

105. It is true that the notice to terminate his employment was not sent to the claimant 5 weeks after the 23 June 2020 exchange of emails, but if the respondent had terminated the claimant's employment on or shortly after 23 June 2020 then the causal link between the refusal to work email and termination of employment would have been obvious. I find that Mr Wood intentionally delayed serving the redundancy notice on the claimant to conceal the fact it was a summary dismissal and not one for reasons of redundancy. I find it more likely than not that the die was cast on 23 June 2020, and as Mr Jones said, he was a marked man from that point.

106. I find that redundancy was not the real reason for termination of the claimant's employment. I find that the reason was entirely personal to Mr Wood. TecFlo is effectively Mr Wood's business. It is a business he established some 35 years ago. It is evidently a business which has thrived under his leadership and one which has survived the Coronavirus pandemic when others have failed. TecFlo is a small business with only 20 or so employees: it has none of the tiers of management to be found in larger businesses. It was Mr Wood's case that he was in sole charge and the person who made the decisions about how his company was to be run, which evidently included "hiring and firing".

107. Even though stranded in South Africa, Mr Wood's hand remained firmly on the respondent's tiller. He said he was aware of what was going on daily, relying on his right-hand women Mrs McNulty, but intervening directly when required. The period in question must have been a stressful time for any business owner, especially when similar businesses were collapsing. I find Mr Wood to be an uncompromising businessman, quick to make decisions without consultation, when it was in his or his company's best interest.

108. The evidence of Mr Simpson demonstrated Mr Wood's willingness to go back on his word and to treat people badly when it suited his

own cause. I find that Mr Wood reneged on the deal with Mr Simpson because he thought he could wring more profit out of their relationship.

109. I accepted the evidence of the claimant regarding the summary dismissal of Richard which I find shows that Mr Wood has a propensity for getting rid of employees who challenge his authority.

110. I find that Mr Jones challenged Mr Wood's authority on three occasions before he was dismissed. The first was on 26 March 2020 when he pointed out to Mr Wood that he was being treated less favourably than other employees because his pension salary sacrifice was not to be paid during the furlough period. Mr Wood's response was a harsh and a clear warning to Mr Jones that he was being ungrateful and should drop the matter.

111. Mr Jones did drop the matter for some time but in the weeks that followed, he found himself not on furlough but still working for the respondent yet being paid less than agreed in his contract. On 29 May 2020, after Mr Wood directed Mr Jones to start selling, Mr Jones asked the reasonable question if he was coming off furlough and returning to work and would his salary sacrifice be reinstated. The response came from Mrs McNulty, but I have no doubt only after a conversation with Mr Wood. I find the answer was Mr Wood's, which was that the claimant was to remain on furlough. I find that Mr Wood would have interpreted the claimant's reference to his salary sacrifice as a further challenge to his authority.

112. The final challenge, and the final straw so far as Mr Wood was concerned, came on 23 June 2020. Mr Wood directed that the claimant engage with Westons Cider to secure sales after the collapse of TecFlo's competitor EWL. The claimant made a stand and refused to do so while on furlough because, I find, he was not being paid in full for his labour.

113. I find that it was the claimant's stand on 23 June 2020 which motivated Mr Wood to dispense with the claimant. Whilst the claimant added value to the respondent, I find Mr Wood decided he was not indispensable. No matter how useful an employee was to his business, I find that Mr Wood regarded respect for his authority more highly.

114. I find for the above reasons that the respondent did not dismiss the claimant for a reason falling within subsection 98(2) of the ERA or for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Consequently, the claimant was unfairly dismissed
contrary to Section 94(1) of the ERA.

115. I therefore uphold the claimant's claims of ordinary unfair dismissal and I dismiss the claimant's claim of automatic unfair dismissal.

**Case number 2418592/20**

Judge C J Cowx
11 June 2022

REASONS SENT TO THE PARTIES ON
14 June 2022

FOR THE TRIBUNAL OFFICE