



# THE EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr V Evazzadeh

v

Troubadour Properties Limited

Heard at: London Central

On: 3-4 November 2022

In Chambers 15 December 2022

Before: Employment Judge Glennie  
Mr S Pearlman  
Ms L Venner

## Representation:

Claimant: In person

Respondent: Ms S Borzych

## JUDGMENT

The unanimous judgment of the Tribunal is that the complaints of automatic unfair dismissal and detriment on the grounds of making protected disclosures are dismissed.

## REASONS

1. The complaints to be decided by the Tribunal, both of which are resisted by the Respondent are:
  - 1.1 Automatic unfair dismissal (protected disclosures).
  - 1.2 Detriment for making protected disclosures.
2. The issues in the complaints are as follows:
  - 2.1 Did the Claimant make a protected disclosure or disclosures? He relies on the following:

- 2.1.1 Oral disclosures to Mr Gunberg, Mr Silversides and Mr Jenei during June to November 2021.
- 2.1.2 Oral disclosures to Mr Silversides during the period November to 5 December 2021.
- 2.1.3 An email dated 7 December 2021.
- 2.2 When was the Claimant dismissed? The Claimant says he was dismissed on 15 December 2022 by Mr Hardeling. The Respondent says that he was dismissed on 5 December 2021 by Mr Silversides.
- 2.3 Was the reason or the principal reason for the dismissal that the Claimant had made a protected disclosure or disclosures?
- 2.4 Did the Respondent do the following:
  - 2.4.1 Fail to act on the email of 7 December 2021.
  - 2.4.2 Dismiss the Claimant in a deliberately hurtful and offensive manner.
- 2.5 If so, did those acts amount to detriments?
- 2.6 If they did, were they done on the ground that the Claimant had made a protected disclosure or disclosures?

### **Procedural matters**

- 3. Employment Judge Sullivan has previously issued a judgment dismissing complaints of unlawful deduction from wages and failure to pay holiday pay, and holding that the complaint of breach of contract (non-payment of notice pay) was well founded.
- 4. At the outset of the hearing an issue arose as to an addendum witness statement that the Claimant wished to use. Ms Borzych objected to this, stating that this had been received on 27 October 2022, and so only a few days before the hearing. The Claimant said that he had sent the addendum to the Respondent's general inbox in August, but had not copied in Ms Borzych (as he had been doing previously when corresponding about the claim) as she had asked him to stop doing so. Ms Borzych said that she had asked the Claimant to stop harassing her with long emails.
- 5. After further consideration Ms Borzych agreed to the hearing proceeding with the Claimant being able to rely on his addendum statement.
- 6. At the commencement of the second and final day of the hearing the Claimant pointed out that he had previously (also on 27 October 2022) applied for a deposit order against the Respondent, and that this had not

been adjudicated upon by the Tribunal. The Employment Judge said that pausing to determine this would derail the hearing as there still remained completion of the Claimant's evidence, the Respondent's evidence and submissions, even assuming that judgment would be reserved. The Claimant did not pursue the point.

**Evidence and findings of fact**

7. The Tribunal heard evidence from the following witnesses:
  - 7.1 The Claimant, Mr Evazzadeh.
  - 7.2 Mr Dominic Silversides, Acting Head Chef.
  - 7.3 Mr Richard Hardeling, General Manager
8. The Claimant had prepared a bundle of documents and page numbers in these reasons refer to that bundle.
9. The Respondent operates the hospitality premises known as The Troubadour. The Claimant has his own bread-making business. In April 2021, when the Respondent was preparing to reopen the Troubadour after lockdown, the Claimant had some discussions with Mr Gunberg of the Respondent about the possibility of using the latter's kitchen for baking bread for his business. Subsequently the Claimant saw an advertisement for a pastry chef at the Troubadour, and he contacted Mr Gunberg again.
10. Ultimately it was agreed that the Claimant would be employed as a chef under a zero hours contract and would be entitled to produce some of his own baked goods for sale using the Respondent's equipment. Mr Gunberg signed the contract on behalf of the Respondent.
11. The Claimant started work on 23 June 2021. After a while a pattern was agreed on whereby he worked a full shift once a week on Sundays.
12. In paragraph 5 of his witness statement the Claimant said that from the outset he raised concerns on many occasions with Mr Gunberg, Mr Silversides and Mr Jenei about the "disorganised, inadequate and dangerous state of the kitchen" and about the behaviour of Mr Silversides (this last point being of less concern as Mr Silversides did not work on Sundays at this time). In paragraph 6 the Claimant stated that by November 2021 Mr Silversides was working on Sundays, meaning that they came into contact, and that he communicated his concerns, which Mr Silversides dismissed with unacceptable excuses, or which he blamed other managers. The Claimant also said that Mr Silversides' behaviour worsened at this time and that "we had bumped into disagreements each time we met on my regular Sundays".
13. In his oral evidence the Claimant identified the following particular complaints made orally:

- 13.1 To Mr Jenei, that the pizza oven was not installed properly; deep fryers were put in and out of the oven; and that a fridge or fridges leaked.
- 13.2 To Mr Gunberg, that the combi oven was not cleaned properly.
- 13.3 To Mr Silversides, that the handle of the cheese grater was broken, leaving sharp edges, and that the fridges leaked.
- 13.4 To all three, that there were no paring knives.
14. When cross-examined about this aspect, Mr Silversides said that he recalled the cheese grater and that this was replaced. He also said that he accepted that the Claimant questioned “certain things”, although the only other one he could recall was the pizza trays, which the Claimant said would warp in the oven. Mr Silversides said that he could not see any danger in that. He did not recall any issue about fridges.
15. In answer to cross-examination about this aspect, the Claimant said that the responses given to his concerns varied from person to person and from time to time. He clearly regarded Mr Silversides as the most unhelpful of the three managers on this point.
16. The Tribunal accepted that the Claimant raised the issues described above. The only other evidence on the point, Mr Silversides’, did not amount to a denial that the Claimant had raised these matters, but rather to an acceptance that he did raise issues, plus an inability to remember what all of them were.
17. The Claimant attended for his usual shift on Sunday 5 December 2021. Mr Silversides’ evidence was that the Claimant did a number of things that displeased him. He said that the Claimant clocked in early but was late arriving at his work station; that on arrival he made some food for himself and ate it; that he took a break without asking; that he made derogatory remarks about food prepared by others; and overcooked some pastry, having ignored Mr Silversides’ instruction about the temperature at which to cook it.
18. The Claimant did not directly address events on 5 December 2021 in his witness statement. When cross-examining Mr Silversides, the Claimant put it to him that he was making up the allegation of arriving late; that there was nothing unacceptable about eating at work; and that he disputed taking an unauthorised break. Mr Silversides in turn disputed all of this. The Tribunal considered that it was not necessary to determine the merits of any of these matters: the relevant point is that we found that (whether justifiably or not) Mr Silversides became annoyed with the Claimant during the day.
19. It was common ground that at the end of the shift on Sunday 5 December 2021 an argument took place between Mr Silversides and the Claimant.

There was a degree of agreement overall about what was said, although there were some potentially significant differences.

20. The kitchen porter had unexpectedly left the restaurant earlier than expected during the shift. Mr Silversides said, and the Tribunal found, that he was annoyed about this at the time (although he subsequently learned of the reason for this and accepted that it had been justified). Once the restaurant had closed, the Claimant was about to leave to go home, when Mr Silversides asked him to help with the clearing up and closing process (something that the kitchen porter would usually have done).
21. There was no dispute that the Claimant in fact agreed to help Mr Silversides, but in their evidence, each accused the other of being bad-tempered at this time. Mr Silversides said in paragraph 15 of his witness statement that the Claimant was reluctant to assist and proceeded to act in a "moody aggressive manner". The Claimant did not address this occasion in his witness statement, but in oral evidence said that Mr Silversides was complaining about the situation and saying that he did not have to do this. The Tribunal did not find it necessary to decide who "started it". The relevant point is that it was agreed that an argument developed.
22. The Claimant's account was that Mr Silversides asked him about working the following day (Monday) and he replied that he had previously said that he could not do this. (Mr Silversides' evidence was that they had earlier agreed that the Claimant would work on the Monday). Mr Silversides then told him to leave and never come back. The Claimant replied with words to the effect of "you are not my employer". Mr Silversides then said that he was sorry and that he would call the Claimant the next day, when they could talk.
23. Mr Silversides' account was that the Claimant became angry and said that Mr Silversides was not his manager and could not tell him what to do. Mr Silversides asked him to leave, meaning leave for the night, and that he would contact him the next day. The Claimant became angrier, repeated that Mr Silversides was not his manager, and said that he would not leave. Mr Silversides told the Claimant to leave, and he replied that he would not come in the next day. Mr Silversides then told the Claimant to leave and not come back. When cross-examined, Mr Silversides denied apologising and saying that they would speak the next day after telling the Claimant to go and not come back, and said that when he used those words he meant to terminate the Claimant's employment. He said that, as Head Chef, he had authority to do that.
24. The Tribunal concluded as a matter of probability that the exchange ended with Mr Silversides saying that the Claimant should go and not come back, and that he did not subsequently apologise or say that he would speak to the Claimant the next day. We concluded this for the following reasons:

- 24.1 It was unlikely that Mr Silversides would have changed his mind about telling the Claimant to go, given the issues that had arisen in the course of the day and the terms of the argument between them.
- 24.2 Mr Silversides did not in fact speak to the Claimant the next day.
- 24.3 Shortly after closing the premises Mr Silversides sent a WhatsApp to Mr Hardeling at page 32 which read “had a bust up with Vahid [the Claimant] not good” but did not mention having apologised or any plan to speak to him the next day. Mr Hardeling also gave evidence of a conversation that night which he did not remember very well, but in which Mr Silversides told him what had happened, and as a result of which he thought “it was his decision”, which the Tribunal considered supported the proposition that Mr Silversides had decided to dismiss the Claimant.
- 24.4 The Claimant’s email of 15 December 2021 (referred to below) asserted that Mr Silversides “tried” to dismiss him, presumably referring to this occasion, without suggesting that he retracted this.
25. The Claimant put it to Mr Silversides that he was just upset and that he did not mean to dismiss him. Mr Silversides disagreed, saying “I meant to terminate your employment”. The Tribunal found that Mr Silversides meant to dismiss the Claimant and that the Claimant understood this, as demonstrated by his email of 15 December 2021. The Tribunal also found that the Claimant’s reference to Mr Silversides having “tried” to dismiss him reflected his assertion, maintained at the time and in the hearing, that he did not have the authority to do that.
26. As to the last point, the Tribunal found that Mr Silversides had authority to dismiss the Claimant. Although the Claimant asserted that he did not, there was no evidence that suggested this. To the extent that the Claimant relied on Mr Gunberg having signed his contract, the Tribunal was satisfied that this was of no significance. Mr Hardeling’s evidence was that he was responsible for “hiring and firing” front of house staff and Mr Silversides was responsible for those in the kitchen. The Tribunal saw no reason to doubt this. One would expect the head chef, or acting head chef, to have that responsibility.
27. There was an issue about whether the Claimant appeared on the rota for Sunday 12 December 2021. He maintained that he had been shown on the rota, and that at some time between 5 and 12 December the entry was erased. Mr Silversides maintained that he had never appeared on the rota for that day. The Tribunal concluded that this made little difference either way: not putting the Claimant on the rota, or removing him from it, could both be consistent with his having been dismissed.
28. Having decided that Mr Silversides dismissed the Claimant on 5 December 2021, the Tribunal considered his reason or reasons for doing this. As explained above, the Tribunal found that Mr Silversides had been becoming

annoyed with the Claimant during the course of the day. They then had what amounted to a row while clearing up and closing the venue at the end of the evening. The Claimant challenged Mr Silversides by saying that he was not his manager, or not his employer. The Tribunal concluded that the immediate reason why Mr Silversides dismissed the Claimant was the row that they were having, against the background of the ways in which the Claimant had annoyed him during the day. Essentially, the reason why Mr Silversides dismissed the Claimant was because he was angry with him because of the events of that particular day.

29. The Tribunal asked itself whether the previous issues the Claimant had raised about equipment and practices within the kitchen played any part in Mr Silversides' decision to dismiss him. We found that the Claimant's raising of these issues probably did not please Mr Silversides, but there was no evidence of his wanting to remove him because he raised them. It is also the case that on 3 February 2022 there was an unannounced inspection of the venue by the local authority's Environmental Health Officer, which produced a grading of 4 on the scale of 0 – 5, which is rated "good". Unless there had been a significant improvement between December and February, Mr Silversides would not have had reason to be greatly worried about standards in the kitchen around the time of the Claimant's dismissal. We concluded that the Claimant's raising of issues about the kitchen had little, if any, influence on his dismissal.

30. The Claimant did not arrive with a view to doing a shift on 6 December. On 7 December 2021 he sent an email at page 4 to Mr Hardeling, Mr Gunberg and Ms Borzych, blind copied to Mr Jenei. In this he wrote:

"It has been almost half a year since I have begun working in the kitchen at Troubadour. I very much enjoy working at Troubadour but I do not like nor approve of the way the kitchen is mismanaged by Mr Dominic Silversides. So I have decided to raise the issue with you in writing after several failed attempts to have any meaningful conversation with Dom

"Dominic is erratic, abusive, disorganised, incommunicable and unpleasant. He is constantly irritable, totally messy, throws objects around in the kitchen..... Furthermore he neither has nor provides any overview whatsoever of the kitchen: stocks are either missing or goes bad after long time of lying dormant in the gallery; equipments are broken and dangerous to work with; there is no routine for preps and when it comes to quality, anything goes! And to add insult to injury he conveniently finds it appropriate to blame everyone else for his own mistakes....."

31. Mr Hardeling's evidence about when he read the email of 7 December was somewhat uncertain. At first he said that he probably read it after the Claimant had sent the WhatsApp message referred to below (i.e. on or after 10 December). Then he said that he probably opened it before or after seeing the WhatsApp message. Ultimately, the Tribunal considered that the sequence in which Mr Hardeling read these made little difference to the issues to be decided.

32. On 10 December 2021 the Claimant sent a WhatsApp message (at page 18) to the staff group which read:
- “Hi colleagues. I have sent an email to the managers of Troubadour about the mismanagement of the kitchen. I am yet to receive a reply. In my email I have proposed a meeting fo...[the rest of the message being missing from the copy in the bundle].
33. An exchange of messages then took place between Mr Hardeling and the Claimant as follows:
- [Mr Hardeling] Hi Vahid. We have been super busy this week and I am sorry we haven't replied to you. Please give a call tomorrow and I will have chat with you.
- [Claimant] Dear Richard, thanks for your message. I appreciate you're being busy. I wished I've had at least received an acknowledgment of receipt the email. I look forward to speak to you soon, albeit I'd prefer a meeting in person and also response to my email. All the best, V.
34. A meeting took place on 15 December 2021. It was not clear to the Tribunal how this meeting came to be arranged. The Claimant referred in his witness statement to emails passing between him and Mr Hardeling on 13 and 14 December, but these were not before the Tribunal. In his oral evidence Mr Hardeling said that he meant to speak to the Claimant at some point, and when asked what about, he referred to the “text”, meaning the WhatsApp message to the staff group. When asked by the Employment Judge what was the point of the meeting, Mr Hardeling replied “he had been sacked and needed to collect his belongings”.
35. Although there was no official note taker at the meeting, both the Claimant and Mr Hardeling produced written notes of it, at pages 6-7 and 34-35 respectively. As with the argument on 5 December, there was a considerable degree of common ground between the parties, and a measure of difference.
36. In addition to the Claimant and Mr Hardeling, Mr Silversides was present from an early point in the meeting. Mr Hardeling's note recorded that the meeting began with reference to the email of 7 December and that he said that the WhatsApp to the staff group had been inappropriate. It was agreed that the meeting started with some discussion of what the Claimant noted as “shortcomings” and Mr Hardeling as points of improvement for the kitchen. Both notes recorded that the Claimant said that the kitchen was disorganised and Mr Silversides' behaviour was unacceptable, giving the example of deleting shifts without communication.
37. The Tribunal found that the meeting became more heated as it went on. Mr Silversides said that it was his kitchen and that he decided who worked in it, or that he did the rota (meaning the same in either case). It was agreed



that the Claimant said to him “you’re not the king”. Mr Hardeling’s account was that he then said that the meeting was over. It was agreed that at about this point, Mr Hardeling stood up (he said in order to leave) and the Claimant told him to sit down. There was also agreement that the Claimant asked for a notice of dismissal in writing, and Mr Hardeling said that there was nothing to write. The Claimant then collected his belongings from his locker and left.

38. The Tribunal found that Mr Hardeling’s primary purpose in arranging to meet the Claimant was, as he said, to speak about the WhatsApp message to the staff group, about the email of 7 December, and about the situation in the kitchen more generally. Mr Hardeling would not have wanted any further messages like the WhatsApp or the email to be sent, and so would have wanted to have a discussion with the Claimant. This was consistent with how the meeting began, on both accounts. We found that it was incidental that the Claimant also needed to collect his belongings.
39. The Tribunal also found that, by the time this meeting took place, Mr Hardeling was aware that Mr Silversides had dismissed the Claimant on 5 December, and accepted that he had been entitled to do that. This was consistent with both accounts of the Claimant asking for notice of dismissal in writing and Mr Hardeling saying that there was nothing to write – because the dismissal had already occurred on 5 December.
40. Following this meeting the Claimant sent an email on 15 December 2021 to the Respondent’s general email address, copied to Mr Gunberg (being addressed to him personally in the body of the message) and Ms Borzych and blind copied to Mr Jenei. This read:

“Hi Andreas.

I am addressing this to you in good faith as it is your signature that is under my contract.

I had an unproductive and disappointing meeting with Richard today at the unarranged presence of Dominic. See the minutes. The problem in the first place began by Dominic thinking that he could fire me on the spot. I told him he cannot, without due process. Richard tried to do the same. I have asked him to give me a letter of dismissal. He seems to be trying to refuse to do so; at least he did not confirm whether he would or wouldn’t. It is at your discretion to dismiss employees if you wish but are obliged by law and the letter of my contract to notify me if you want to terminate my employment.”

41. The Tribunal found that this email reflected the Claimant’s beliefs or contentions that only Mr Gunberg, as the person who signed the contract on behalf of the Respondent, could dismiss him and that any dismissal had to be in writing: hence his statements that Mr Silversides “thought” he could fire him on the spot, and that Mr Silversides “tried” to do the same. Both words reflect the Claimant’s stance that, whatever they had thought they could do, or had tried to do, they had not succeeded in doing it.

42. The first claim was then presented on 22 December 2021.

**The applicable law and conclusions**

43. The first issue to be decided is whether the Claimant made a protected disclosure or disclosures. This is in reality a question of academic interest only, given the Tribunal's findings about when the Claimant was dismissed and the principal reason for that, the consequences of which will be explained below. For completeness, however, the Tribunal reached the following conclusions on this issue.
44. Section 43A of the Employment Rights Act 1996 provides that 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 43C provides that a qualifying disclosure is made in accordance with that section if it is made to the worker's employer.
45. The definition of a qualifying disclosure in section 43B includes the following:
- “(1).....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:*
- (d) That the health or safety of any individual has been, is being, or is likely to be endangered.”*
46. In **Ayodole Martin v London Borough of Southwark [2021] UKEAT/0239/20** the Employment Appeal Tribunal referred to the decision of the Court of Appeal in **Kilraine v London Borough of Wandsworth [2018] ICR 1850** as setting out the correct approach to whether there has been a disclosure of “information”. There is no absolute dichotomy between information and allegation. However, for a statement or disclosure to be a qualifying disclosure “it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)” (**Kilraine** paragraph 35).
47. The Tribunal concluded that the Claimant's complaints or statements about the deep fryers being put in and out of the oven; about the cheese grater; about the lack of paring knives; and about the combi oven not being cleaned properly amounted to protected disclosures. They were made to his employer, in the persons of the relevant managers. The Tribunal found that they involved the disclosure of information.
48. Reminding itself that it is not necessary that the Claimant should be shown to have been “right” about the disclosures, the Tribunal also concluded that he believed that they tended to show that the health or safety of individuals (namely, those working in the kitchen for the first three, and customers in relation to the combi oven) had been, was being or was likely to be endangered; and that this belief was reasonable. The disclosure about the

deep fryers involved a risk of workers being burned, those about the cheese grater and the knives involved a risk of workers cutting themselves. The disclosure about the combi oven involved a risk of customers being made unwell. The Tribunal accepted that the Claimant believed, and it was reasonable for him to believe, that the disclosures were made in the public interest, the “public” being other workers in the kitchen in the first three instances, and customers in the fourth.

49. The Tribunal considered that the information given about the fridges and the pizza oven did not amount to protected disclosures. Assuming that the Claimant believed that these matters involved a danger to health, it was not reasonable for him to believe this. The fact that a fridge was leaking would not necessarily mean that the temperature control was compromised; if an oven was not installed properly it might not work, but that would not in itself present a danger to health or safety.
50. The Tribunal concluded that the email of 7 December 2021 did not include protected disclosures. The statement that Mr Silversides was “totally messy” did not, in the Tribunal’s judgement, convey any specific information. The statement that stock was left to go bad is on its face a complaint about waste rather than of something endangering health or safety. The complaint that equipment was broken or dangerous to work with was, we found, too vague and unspecific to amount to a disclosure of information, unlike the earlier oral disclosures which identified the particular items of equipment in question.
51. The Tribunal has found that the Claimant was dismissed by Mr Silversides on 5 December 2021. This means that, whatever the status of what the Claimant wrote in his email of 7 December, this cannot in any event have formed any part of the reason for his dismissal.
52. We have also found the principal reason for the dismissal was that Mr Silversides was angry with the Claimant because of the events of that day. That finding excludes the possibility of the reason or principal reason being that the Claimant had made protected disclosures, with the result that the complaint of automatic unfair dismissal is unsuccessful.
53. The Tribunal then considered the detriment complaint. Section 47B of the Employment Rights Act provides that:
  - (1) *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.*
54. The requirement that the detriment be done “on the ground that” a protected disclosure has been made differs from the test of the reason or principal reason for unfair dismissal. It is necessary only that the making of a protected disclosure be a substantial, i.e. a more than trivial, reason for the detriment.

55. The Tribunal found that the detriment of failing to act on the email of 7 December 2021 was not made out on the facts. The Respondent did not fail to act on the email: we have found that Mr Hardeling arranged the meeting on 12 December 2021 in part in order to discuss it. There was on all accounts some discussion of the situation in the kitchen at the beginning of the meeting. The Tribunal found that the meeting then continued and ended as it did because those involved became angry with one another. We concluded that the making of protected disclosures (whether orally to the various managers as found by the Tribunal, or (if the Tribunal is wrong in its conclusions) in the email of 7 December played no part in the meeting continuing or ending in the way that it did.
56. The second detriment relied on was that of dismissing the Claimant in a deliberately hurtful and offensive manner. The Claimant's case on this aspect was directed to what occurred on 12 December 2021, as he maintained that it was on this date that he was dismissed. In a sense, this allegation was not made out on the facts, as the Tribunal has found that the Claimant was not dismissed on this occasion. However, in case that is too restrictive a view of the allegation, the Tribunal considered what its conclusions would be were the allegation to be recast more generally as one of treating the Claimant in a deliberately hurtful or offensive manner.
57. Bearing in mind its conclusions about the alleged failure to act on the email of 7 December, the Tribunal found that the way in which the Claimant was treated at the meeting (whether or not it could be described as hurtful or offensive) was not deliberate in the sense of pre-planned, nor did the disclosures play any part in it occurring. It happened because those involved became angry with one another.
58. The complaint of detriment done on the ground of making protected disclosures was also therefore unsuccessful.
59. The claim is therefore dismissed.

Employment Judge Glennie

Dated: .....21 December 2022.....

Judgment sent to the parties on:

22/12/2022

For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.