



EMPLOYMENT TRIBUNALS

Claimant: Saqib Inayat

Respondent: Travelodge Hotels Limited

Heard at: London South, by CVP

On: 22, 23, 24, 25 and 26 January 2024

Before: EJ Rice-Birchall
Ms Jerram

Representation

Claimant: In person

Respondent: Miss Urquhart, Counsel

JUDGMENT

1. The claimant has insufficient service to bring a claim of unfair dismissal. The complaint of unfair dismissal is dismissed.
2. The complaint of victimisation is not well-founded and is dismissed.

REASONS

Written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Background

1. The claimant made allegations of discrimination which he alleged occurred from 11 April 2022 to 25 August 2022 whilst he worked at the respondent's Greenwich hotel in a claim submitted in August 2022. That claim (claim 1) was rejected for a failure to obtain an ACAS EC certificate.
2. Time expired on 24 November 2022 but he lodged claim 2 on 18 December 2022.
3. At a preliminary hearing on 11 October 2023, EJ Burge decided that the claimant had no reasonable prospect of establishing that alleged discriminatory acts from 11 April 2022 to 25 August 2022 were part of a course of conduct with those commencing from January 2023 or that it was

just and equitable to extend the time limit for bringing complaints of discrimination in relation to those acts.

4. The complaints of discrimination in relation to those acts were therefore struck out under Employment Tribunal Rule 37(1)(a).
5. The Claimant made a number of applications for amendment which the respondent did not contest and which have given rise to the agreed issues set out below. The personnel involved in the 11 April 2022 to 25 August 2022 allegations which were struck out were different to those in the alleged victimisation from January 2023 as the claimant moved Travel Lodges, from Greenwich to Aldgate East, at his request.

Issues

Unfair Dismissal

6. The claimant sought to bring a claim for unfair dismissal. The Claimant's employment commenced on 7 February 2022 and he was summarily dismissed on 20 October 2023 and so he does not have sufficient service to bring this claim. This was agreed with the claimant at the outset and he was informed that this claim would be dismissed.

Victimisation

7. Did the Claimant do a protected act as follows: Bring a claim on 18 December 2022? The Respondent accepts that the Claimant has done this protected act.
8. Did the Respondent do the following things?
 - a. Issue 1: At the beginning of January Pedro Dominic put the Claimant under "Special assessment";
 - b. Issue 2: On 2 March 2023 the Respondent (Claudia and Pedro) subjected the Claimant to a Fact Finding meeting;
 - c. Issue 3: On 2 March 2023 Pedro raised false and planted allegations saying the Claimant;
 - i. did not obey his senior (Mark Murphy);
 - ii. was rude with the staff and customer despite no evidence; and
 - iii. demonstrated a lack of leadership;
 - d. Issue 4: On 2 March 2023 Pedro was both fact finding and witness. When challenged by the Claimant he was told Pedro was only making notes when fact finding which was not true;
 - e. Issue 5: Hold a disciplinary hearing on 7 March 2023 by Ryan;
 - f. Issue 6: Hold a disciplinary hearing later on 14 March by Ryan;

- g. Issue 7: Ryan ignored the evidence provided by the Claimant and on 22 March 2023 gave a final written warning for dismissal (Ryan, a friend of Stuart Bell), this also meant that the Claimant could not get a 5% salary increase and £250 vouchers as he was on a final warning;
- h. Issue 8: On 24 May 2023 the Claimant appealed against the final written warning, requested it not be before Stuart Bell because he had told Pedro to do the fact finding in the first place but Stuart Bell did it anyway;
- i. Issue 9: Claimant's appeal was unsuccessful on 9 June 2023;
- j. Issue 10: The Respondent decided to pay SSP and not to pay full pay when Claimant was off sick 30 March – 30 April. Payroll (Martin Liggins) said in May (?) that he should get full pay but someone decided not to pay him. Possibly Stuart Bell;
- k. Issue 11: On 23 August the Respondent subjected the Claimant to a fact finding in relation to a fraud allegation of £19.92 and to leaving early;
- l. Issue 12: On 23 August 2023 the Respondent suspended the Claimant for the fraud allegation of £19.92;
- m. Issue 13: On 24 August 2023 the Claimant was removed from the Whatsapp group;
- n. Issue 14: On 4 October 2023 there was a final disciplinary meeting, where they added new allegations about the Claimant leaving early; NB this issue was deleted with the agreement of the parties and allegation k (issue 11) was amended to include the allegations about the claimant leaving early.
- o. Issue 15: On 20 October 2023, the Claimant was dismissed;
- p. Issue 16: The Claimant's appeal against dismissal was rejected; and
- q. Issue 17: The Claimant did not receive his accrued outstanding holiday pay in his final pay slip.

9. If so, did the Respondent subject the Claimant to a detriment?

10. If so, was it because the Claimant had done the protected act?

Remedy for victimisation

11. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

12. What financial losses has the discrimination caused the Claimant?

13. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
14. If not, for what period of loss should the Claimant be compensated?
15. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
16. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
17. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
18. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
19. Did the Respondent or the Claimant unreasonably fail to comply with it?
20. If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
21. Should interest be awarded? How much?

The Tribunal

22. On day four of this five day hearing, one of the non-legal members became unavailable. The parties gave their consent to proceed with the Employment Judge and one non-legal member.

Evidence

23. The claimant and his father had prepared witness statements and gave oral evidence on behalf of the claimant. There were eight witnesses for the respondent, each of whom had prepared a witness statement and who gave oral evidence, as follows: Mrs Morascu, Hotel Manager; Mr Liggins, Payroll Administrator; Mr Domingos, Emergency Accommodation Regional Support Co-ordinator; Ms Muscutt, District Manager; Mr Alcock, District Manager; Mr Bell, District Manager; Ms Rostoka, Hotel Manager; and Mr Rapson, District Manager.
24. The Tribunal had the benefit of a Bundle of documents which had 395 pages. An additional document was disclosed by the claimant in response to a late witness statement submitted by the respondent, that of Mr Liggins.

Facts

25. The claimant's employment with the respondent began on 7 February 2022 and was terminated on 27 October 2023. He was employed as an assistant manager at the respondent's Aldgate East hotel, having previously worked at the respondent's Greenwich hotel. He was moved due to ongoing grievances.

26. As stated above, the claimant lodged two claims. The respondent was not aware of claim 1 as it was not accepted and claim 2, which was lodged on 18 December 2022, was agreed by the respondent to be a protected act.
27. Notice of claim 2 was sent to the respondent on 30 December 2022. It was posted to the Greenwich hotel. Therefore the respondent would not have been aware of it at all until 31 December 2023, but more likely 2/3 January (1 January being a bank holiday). None of the witnesses in the claimant's current claim were based at Greenwich.
28. The claim was then forwarded to the respondent's head office. So, if Greenwich forwarded it promptly, the first the employee relations team would have known of it would be the first week of January.
29. Mr Bell heard about the claim in his capacity as District Manager for the region in which the claimant worked in early 2023.

Issue 1 – “special assessment”

30. In December 2022, a skills matrix was created by Mr Domingos. He and Mr Bell decided that it would be useful to help to identify training needs.
31. The claimant was the first person to be assessed but that was because his hotel had been identified as not performing well and the claimant was identified as someone who could benefit from it. It was part of a strategy to upskill management more widely and was applied to other managers.

First fact find

32. In February 2023, an impartial external audit team conducted an audit on Aldgate East Travelodge where the claimant was the Assistant Hotel manager (AHM). As a result of the audit, a number of concerns came to light in relation to the claimant's fire safety practices, resulting in the claimant's hotel scoring the lowest rating. The audit highlighted the claimant's lack of awareness of the correct actions to take in the event that the fire alarm sounds.
33. As a result, the claimant was invited to a fact-finding meeting on 22 February 2023 which was held by Marie Muscutt, District Manager. Ms Muscutt was not aware of the claims brought against the respondent by the claimant.
34. The claimant does not make any allegations in respect of this fact find.

Issues 2 –5: fact find by Mrs Marascu and Mr Domingos

35. As a result of both an internal and external complaint about the claimant's conduct on 25 February 2023, a further fact find took place. Ms Marascu was the chair and Mr Domingos was the note taker.
36. It was alleged that the claimant had been booking guests of the hotel into other hotels of the respondent due to the booked rooms not being clean and ready to be occupied rather than cleaning them or supervising his team to clean them, as instructed by his Hotel Manager. This is a process called

outbooking, which is permitted in certain circumstances, for example when the hotel is over booked.

37. Mrs Marascu was a Hotel Manager based, at that time, at a different hotel to the claimant. She was unaware of the claimant's claim until around December 2023 when she was asked to "save the date" for the Tribunal hearing.
38. The allegations put to the claimant at the fact finding meeting related to the complaints received in that there was an allegation that he had not obeyed a management instruction when he was told to clean the rooms by his manager, Mr Murphy; that he had been rude to the staff and customers as the customer had complained about him being rude to her; and that he had demonstrated a lack of leadership as it was a leadership role to give priority to ensuring the rooms were ready and cleaned to be allocated to customers, rather than outbooking the rooms.
39. Mr Domingos, was present at the fact find as a note taker. The minutes of that meeting demonstrate that he interjected at times during the meeting to clarify a point, for example.
40. Although Mr Domingos had provided a statement to the respondent in relation to the first fact find, it was on a matter which was not the subject of this fact find. In any event, he had no decision making role, which was left to Mrs Marascu. She decided, in consultation with respondent's employee relations team in relation to the earlier allegation of misconduct concerning the audit, that there was a case to answer and the matter should go forward to a disciplinary hearing.
41. The claimant was invited to a formal disciplinary hearing by letter dated 3 March 2023. The letter reminded the claimant of his right to be accompanied and confirmed the allegations as followed:
 - a. 'Serious failure to demonstrate the leadership behaviours and/or management practice required - specifically, although you have received full training (including additional retraining), when asked to describe the fire evacuation process as part of the hotel's audit, you were unable to do so. Additionally, when asked again to describe the process in your fact finding you were further unable to do so.
 - b. A serious breach of company policies and procedures - specifically, on 25/02/2023 you were asked by your manager to clean rooms due to overbooking in the hotel, but instead outbooked guests to other hotels.
 - c. Refusal to carry out a reasonable instruction from a manager or superior - specifically, on 25/02/2023 you were asked by your manager to clean rooms due to overbooking but failed to do so.'
42. The disciplinary invitation letter also attached relevant evidence to be used during the disciplinary hearing.

Issues 6 and 7: the first disciplinary hearing

43. The claimant attended the disciplinary hearing on 7 March 2023, which was chaired by Mr Alcock, District Manager. The claimant was unaccompanied.

44. Mr Alcock was not aware of the claims brought by the claimant, either directly or through Mr Bell, until December 2023 when he was asked to attend this hearing as a witness.
45. The claimant and Mr Alcock spoke at length in relation to the allegations and it was agreed between Mr Alcock and the claimant that the disciplinary hearing would be adjourned and reconvened to allow Mr Alcock to investigate matters fully.
46. A reconvened disciplinary hearing was accordingly held on 14 March 2023, again chaired by Mr Alcock.
47. Having considered the claimant's representations during the disciplinary hearings, Mr Alcock upheld all allegations against the claimant and issued him with a final written warning. This sanction was confirmed in writing by letter dated 21 March 2023 which set out the evidence Mr Alcock had heard and reminded the claimant of his right of appeal. Mr Alcock considered a final written warning to be appropriate.
48. As a consequence of being on a final written warning, and as set out in the disciplinary policy, an employee with a live final written warning is not entitled to a pay rise or to vouchers.
49. The claimant then commenced a period of sickness absence from 27 March 2023 until 10 May 2023 owing to sickness, type two diabetes and shoulder pain. He was paid statutory sick pay during this absence as he had previously exhausted his enhanced contractual entitlement.

Issues 8 and 9: the appeal

50. The claimant appealed the final written warning by email dated 23 March 2023. The claimant then shared a number of emails with the respondent's employee relations team to expand on his grounds of appeal and to provide further evidence in support of his appeal.
51. The claimant was invited to an appeal hearing by letter dated 5 April 2023 for a hearing to be held on 11 April 2023. The letter confirmed that Mr Bell would chair the appeal, as he was the District Manager for the region that the claimant was based in, and the sanction had been applied to an AHM in his region.
52. After the claimant returned to work on 11 May 2023, he was invited to a rearranged appeal hearing by letter dated 16 May 2023. The letter confirmed that the claimant's grounds of appeal centred around his feeling the decision was unfair and that evidence was not considered.
53. In an email exchange dated 17 May 2023, the claimant requested that another manager chaired his appeal as he did not feel comfortable sharing his evidence with Mr. Bell. The respondent's employee relations team queried the request and reassured the claimant that Mr. Bell was impartial. On 19 May, the claimant replied to say that he accepted the decision and no longer opposed Mr. Bell chairing the appeal.

54. The claimant attended the appeal hearing with Mr. Bell on 24 May 2023. Mr. Bell allowed the claimant to expand on his points of appeal and he considered the claimant's email exchanges with the employee relations team and the further evidence that he provided.
55. Having considered the claimant's appeal, Mr Bell summarized the grounds as:
- a. 'you felt the context of the situation in the hotel wasn't properly considered (carpet refit had been delayed meaning rooms were being put back online that weren't safe to be sold).
 - b. Claudia (Mrs Marascu) and Pedro (Mr Domingos) fabricated allegations to put you through disciplinary proceedings.
 - c. Pedro was meant to just be a notetaker for the fact find (which is what was recorded on the notes) but that was not true as he asked questions in the meeting.
 - d. impact of alleyways and carpets (customers have to walk through to get to ground floor rooms).
 - e. you never received any practical Fire Evacuation training.
 - f. you feel you should have been paid company sick pay (CSP) rather than statutory sick pay (SSP) while signed off recently.'
56. Mr Bell confirmed his appeal outcome by letter dated 5 June 2023. He did not uphold the claimant's appeal save for .a which he partially upheld owing to representations made by the claimant in relation to the carpet refit. Mr Bell did not consider this concession to be sufficient to overturn the sanction of a final written warning.

Issue 10: sick pay

57. As part of the appeal, the claimant raised that fact that he felt he should be paid CSP rather than SSP in relation to his recent sickness absence. Mr Bell confirmed that this could not be considered as part of the appeal but that People Services and the employee relations team had been in contact with him to confirm that he had used his CSP entitlement.
58. At this hearing, the respondent conceded that a mistake had been made and that, in fact, the respondent owed the claimant CSP in respect of his period of sickness absence. The Tribunal heard evidence from Mr Liggitt that the claimant's request coincided with a change in systems and that he had checked at the time and was of the view then that the claimant had been paid correctly. He discovered the mistake on request from the respondent, in preparation for this hearing, to check the claimant's entitlement. The respondent has now agreed to pay the claimant the sums owed.
59. Mr Liggitt did not know about the claimant's claims until 22 January 2024 when he was asked to check the claimant's CSP entitlement.

Issue 11: fact find

60. In August 2023, further conduct concerns came to light in relation to the claimant. These concerns were associated with the claimant leaving his shift early on multiple occasions and inappropriate use of the respondent's petty cash and expenses system. The concerns around petty cash and expenses were identified when Mr Murphy and Mrs Marascu found the

receipts that the claimant had left in the safe when he had taken money from the safe for a taxi ride without authorization. At this stage, Mrs Marascu was still unaware of the Claimant's claims, but the respondent accepts that Mr Murphy was aware of the claim.

61. The concerns around the claimant leaving shifts early were reported to the respondent by a team member at the hotel where the claimant worked who was unaware of the claimant's claims. Subsequently, Mrs Marascu reviewed CCTV footage and created a schedule of the claimant's start and finish times. She identified that the claimant had been arriving late for his shift and leaving early but had been paid full pay.
62. Mrs Marascu, still unaware of the claim, held a fact finding meeting with the claimant on 23 August 2023 in relation to both the petty cash matter and the claimant's start and finish times.

Issue 12: suspension

63. The claimant was suspended from his duties on full pay by letter dated 29 August 2023 by Mrs Marascu. The disciplinary policy confirms that an employee can be suspended if they are suspected of something that could be gross misconduct.
64. The suspension letter confirmed to the claimant the four separate allegations that he was accused of. Having considered the findings of her investigation, Ms Marascu considered that there was a case to answer, and the concerns were progressed to a formal disciplinary hearing. She had consulted employee relations over the allegations and her decision to proceed to a disciplinary hearing. Though employee relations knew about the claimant's claims, there was no evidence that their advice to Mrs Marascu was influenced in any way by the claimant's claim.
65. The allegations which she had identified were as follows:
 - a. Failure to maintain an acceptable level of punctuality or attendance;
 - b. theft from the company (in relation to the £19.92 from the till and record hours incorrectly);
 - c. serious breach of cash handling procedures; and
 - d. forgery or fraud including falsification of records in relation to the claimant's hours of work.

Issue 13: removal from What'sapp group

66. The claimant was removed from the managers' What'sapp group. The claimant complained to employee relations about this and was told that this was done to reduce stress on him whilst he was out of the business.

Issue 15: dismissal

67. The claimant was invited to a disciplinary hearing. The hearing was to be held by Joana Lopes, Hotel Manager. The claimant asked for a change of hearing manager at this stage as he believed that manager had a close working relationship with Mr Bell. The respondent accommodated this request.

68. The letter confirmed the allegations of misconduct against the Claimant as:
- a. failure to maintain an acceptable level of punctuality or attendance – it was alleged that the Claimant had arrived late and left early from his shifts on multiple occasions without authorization;
 - b. theft from the company, its colleagues, agents, customers or any other person – it was alleged that the claimant had taken petty cash for personal use to pay for travel home without authorisation;
 - c. serious breach of cash handling procedures, including key security - it was alleged that the claimant had taken petty cash for personal use to pay for travel home without authorisation; and
 - d. forgery or fraud, including falsification of records – the claimant had signed for full shifts on multiple occasions despite arriving late and / or leaving early.
69. The invitation letter also attached relevant documentation and evidence to be used during the disciplinary hearing.
70. The disciplinary hearing was rescheduled as a result of a period of sickness absence and holiday.
71. The rescheduled disciplinary hearing took place on 4 October 2023, which was chaired by Ms Rostoka, Hotel Manager. Ms Rostoka was not aware of the claims brought against the respondent by the claimant until the disciplinary hearing, when the claimant informed her of them.
72. During the hearing, Ms Rostoka put each allegation to the claimant, including any supporting evidence, and allowed him the opportunity to make representations and respond to the allegations.
73. In relation to the allegations around taking petty cash for personal use, the claimant explained that he took petty cash and put two personal taxi receipts in the safe for 1 August 2023 (due to train strikes) and 10 August 2023 (due to a team member arriving late to work). Ms Rostoka referred to the respondent's petty cash policy and the claimant acknowledged the policy of not using petty cash for personal use, including for personal travel to / from work. Ms Rostoka acknowledged that the claimant did seek to clarify the position with his manager on 1 August 2023 and was told that he didn't think use of petty cash for personal use and travel expenses to / from work was allowed but he would check and revert. However, even though the manager did not respond, the claimant again used the petty cash for personal use.
74. In relation to the allegations around falsification of records / punctuality and attendance, Ms Rostoka detailed the various different instances of the claimant arriving later and / or leaving early from his shift between 1 August 2023 and 15 August 2023. Ms Rostoka explained that, in one week, the claimant had worked 22.75 of his contracted 40 hours but was paid for the full 40 hours. She detailed the instances of the claimant leaving his shift early and there was a pattern of him leaving up to five hours before his scheduled finish time, all of which were caught on the respondent's CCTV.

75. Unfortunately, it was not known to Ms Rostoka at the time that the CCTV records were one hour different to actual time. The claimant knew that the dates and times were wrong in certain regards, for example they did not tally with the time he had requested a taxi. Again this would have added to his sense that the respondent was out to get him.
76. The claimant said that he did seek approval from Mr Bell on 25 July 2023 to leave early as his father was unwell but had not sought approval for any other dates. Ms Rostoka considered this to be evidence that the claimant was aware of the Respondent's absence reporting procedure, but had only followed them once and, subsequently, ignored them.
77. The claimant also suggested that it was his manager's responsibility to amend his hours on the respondent's systems, but also acknowledged that his manager was not aware that he was not working his full contractual hours.
78. Having considered the allegations, the evidence available and the representations of the claimant during the disciplinary hearing, Ms Rostoka wrote to the claimant by way of letter dated 27 October 2023 to confirm that all the allegations against him had been upheld. She confirmed her decision to summarily dismiss the claimant for gross misconduct.
79. Ultimately, Ms Rostoka did not find the claimant's representations to be credible. He had shown blatant disregard for the petty cash policy and had consistently not completed his contractual hours over a period of over two weeks but had signed for, and been paid for, his full contractual hours. Ms Rostoka considered a lesser sanction but, ultimately, was satisfied that the claimant's actions were dishonest and lacking in integrity and that there had been a breakdown in trust and confidence.

Issue 16: appeal rejected

80. The claimant appealed the termination of his employment by email dated 30 October 2023. He was invited to an appeal hearing by letter dated 9 November 2023 which scheduled a hearing for 15 November 2023. The letter reminded the claimant of his right to be accompanied and confirmed that the hearing would be heard by Mr Rapson, District Manager. Mr Rapson was aware of the claimant's claim as the claimant had referred to it in his appeal email. He was not aware of the facts of the claim. Mr Rapson was advised by the respondent's ER team to discuss the claimant's appeal only.
81. The letter summarised the claimant's grounds of appeal as:
- a. he felt that the allegations against him were pre-planned by Pedro Domingos and Mr Bell; and
 - b. he felt that the outcome was disproportionate.
82. Mr Rapson met with the claimant on 15 November 2023 to hear his appeal and he allowed the claimant the opportunity to expand on his grounds of complaint and make further representations.

83. Having heard the claimant's appeal, Mr Rapson wrote to him by letter dated 17 November 2023 to confirm that neither of his grounds of appeal had been upheld. Mr Rapson was satisfied that neither Mr Domingos or Mr Bell had influenced the decision to dismiss, and that Ms Rostoka had acted entirely independently. He was further satisfied that dismissal was an appropriate sanction for the four allegations of gross misconduct that had been upheld against the claimant.
84. Finally, as the claimant had been overpaid, the holiday pay he was due on termination was deducted from the overpayment and he received no holiday pay on termination of his employment, though his holiday pay was evidenced as having been taken into account on his payslip.

Law

Victimisation

85. Section 27 of the Equality Act 2010 states as follows:
- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.

 - (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

 - (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

 - (4) This section applies only where the person subjected to a detriment is an individual.

 - (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

Detriment

86. The definition of detriment in *Shamoon v Chief Constable of the RUC* [2003] ICR 337 invites the Tribunal to find that “*by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work*” (para 34).
87. The reference to a “*reasonable worker*” means that an unjustified sense of grievance is not enough to show that a claimant has been subjected to a detriment.

Because of a protected act?

88. The Claimant must demonstrate that the protected act “*had a significant influence on the outcome*” according to Warburton v Chief Constable of Northamptonshire Police [2022] EAT 42, para 64.

Conclusions

89. There is little factual dispute in this matter. Therefore, the key questions for the Tribunal are: were those things detriments? and why did they occur? Was it because the claimant had brought a claim, or for other, non-discriminatory reasons?

Unfair Dismissal

90. The Claimant’s employment commenced on 7 February 2022 and he was summarily dismissed on 20 October 2023. He does not have sufficient service to bring this claim. It was agreed at the outset that this claim would therefore be dismissed.

Victimisation

91. The claimant relies on his claim, brought on 18 December 2022, referred to as claim 2, as a protected act. The respondent accepts that the claimant has done a protected act by raising a claim against the respondent. That claim was lodged on 18 December 2023 and notified to the respondent by letter, addressed to its Greenwich hotel address in the first instance, dated 30 December 2023.

Issue 1: at the beginning of January 2023, Mr Domingo put the Claimant under “Special assessment”.

92. The Tribunal finds that this did occur but that it was not a special assessment for the claimant, rather a matrix aimed at assisting managers such as the claimant by identifying training needs. The claimant was the first it was applied to, but this was because it was identified that the claimant may have had training needs and his hotel was performing badly.

93. The Tribunal finds that it was not a detriment to apply such a matrix, which was aimed to assist to bring the claimant and hotel up to standard.

94. In any event, the plan for the matrix was conceived before Stuart Bell knew about the claimant’s claim and the Tribunal accepted Mr Domingos evidence that he had no knowledge of the claim until shortly before this claim was heard when he was asked to be available to provide witness evidence.

95. The Tribunal is satisfied that there was no evidence to suggest this was done because of the protected act.

Issue 2: on 2 March 2023 the respondent (Mr Domingos and Mrs Marascu) subjected the claimant to a fact finding meeting.

96. A fact finding meeting did take place on 2 March 2023 in relation to complaints that had been raised both internally and externally. It was held by Mr Domingos and Mrs Marascu.
97. Whilst the Tribunal considers that it is a detriment to be asked to attend a fact find, as it is implicit in asking a person to attend a fact find that there may be a disciplinary case to answer, we find that neither Mr Domingos or Mrs Marascu knew about the claimant's claim at that time.
98. The Tribunal was satisfied that the fact finding meeting was a response to the two complaints which had been raised about the claimant's conduct and not a response to the claimant having lodged a claim. The claimant's allegation that Mr Bell was orchestrating events in the background is not evidenced. Whilst Mr Bell knew about the claim, the fact find was an appropriate response to the issues raised, one of which was raised externally, by a customer. There was no allegation that Mr Bell would have influenced the customer to raise the complaint. In any event, the Tribunal accepted Mr Bell's evidence that he didn't really pay the claim any attention, particularly as it, at that point, contained allegations which related to the claimant's time at Greenwich rather than at Aldgate East, and Greenwich was not in his area. The Tribunal is satisfied that the reason for the fact find was the complaints and had nothing to do with the claimant's protected act.

Issue 3: On 2 March 2023 Mr Domingos raised false and planted allegations saying the claimant; did not obey his senior (Mark Murphy); was rude with the staff and customer despite no evidence; and demonstrated a lack of leadership.

99. The Tribunal does not accept that Mr Domingos "raised false and planted" allegations. The allegations were appropriate in light of the complaints that had been received, both internally and externally. Further, they were not raised by Mr Domingos but by Mrs Marascu. The Tribunal accepted Mrs Marascu's evidence that where complaints of rudeness are made by a customer, that would always be investigated.
100. In any event, the reason why the allegations were put to the claimant was because of the complaints, and because it was identified that there was a potential disciplinary issue, in particular as regards ensuring all rooms available were cleaned and allocated, and not because of the claimant's protected act.
101. Neither Mr Domingos nor Mrs Marascu knew about the claim. The claimant's allegation that this was effectively a conspiracy between ER and Mr Bell to frame the claimant is not accepted by the Tribunal. This was an appropriate response to complaints received and they, and the allegations they gave rise to, were the reason for the treatment.

Issue 4: On 2 March 2023 Mr Domingos was both fact finding and witness. When challenged by the claimant he was told Mr Domingos was only making notes when fact finding which was not true.

102. It is accepted that Mr Domingos was present at the fact find and had been asked to give a statement in relation to the fire issue (which was not relevant to this fact find). It is not accepted that Mr Domingos was doing

anything other than performing a note taking role in the fact find. His asking some questions or intervening during the fact find for clarification purposes is consistent with his role as note taker.

103. The Tribunal does not consider that Mr Domingos' attendance or role during the fact find was a detriment. He had no decision making role. The statement he gave was not about the subject of the fact find. Whilst he did participate in the fact find, that did not interfere with his role as notetaker as it is permitted for a note taker to ask questions for clarification.
104. In any event, Mr Domingos had no knowledge of the claim either directly or through Mr Bell. And therefore the reason for the claimant's treatment could not have been the claimant's protected act.

Issue 5: Hold a disciplinary hearing on 7 March 2023 by Mr Alcock

105. It is accepted that there was a disciplinary hearing on 7 March 2023 held by Mr Alcock and that this was a detriment.
106. However, the reason for the disciplinary hearing was not the claimant's protected act. The reason the disciplinary hearing was held was because there were conduct allegations which needed to be addressed, as identified at the fact find. All of those issues had originally been raised by external sources, namely the customer and the audit team. Mr Alcock was identified as the hearing manager and the claimant took no issue with his appointment into that role.
107. In any event, Mr Alcock did not know about the claimant's claims and nor did Mrs Marascu, who decided that there was case to answer.

Issue 6: Hold a disciplinary hearing later on 14 March by Mr Alcock

108. It is accepted that Mr Alcock adjourned the disciplinary hearing on 7 March 2023 and that it was reconvened on 14 March 2023.
109. The Tribunal does not consider that the fact of an adjournment is a detriment as it was necessary in order for Mr Alcock's decision to be properly considered and to allow for evidence to be taken into account.
110. In any event, Mr Alcock did not know about the claimant's claim, having found out about it only in December 2023, when he was asked to attend this Tribunal.
111. There was no evidence to suggest Mr Alcock was influenced in his decision either by ER or Mr Bell.
112. Therefore, the Tribunal does not accept that this decision was in any way influenced by the claimant's protected act.

Issue 7: Mr Alcock ignored the evidence provided by the claimant and on 22 March 2023 gave a final written warning for dismissal (Mr Alcock, a friend of Mr Bell), this also meant that the claimant could not get a 5% salary increase and £250 vouchers as he was on a final warning.

113. The evidence before the Tribunal, and in particular the outcome letter, and the fact that the case was adjourned whilst Mr Alcock considered additional evidence, suggests that Mr Alcock did not ignore the claimant's evidence. Mr Alcock may have considered some of the claimant's evidence irrelevant or may not have agreed with it, but that is not the same thing as ignoring the claimant's evidence.
114. As regards the evidence the claimant brought about some of the rooms being unavailable due to carpet issues, this was taken into account by Mr Alcock who believed that there were other rooms available which should have been cleaned, which the claimant did not address, and kept returning to the carpet issue, which only provided an explanation as regards part, not all, of the problem identified.
115. Mr Alcock did give the claimant a final written warning and this did have the consequence for the claimant that he could not get a salary increase or vouchers.
116. It is accepted that a final written warning and the consequent inability to receive a pay increase/vouchers is a detriment.
117. However, being given a final written warning had no connection with the claimant having brought a claim as Mr Alcock did not know about it. Whilst he is a professional contact of Mr Bell, he is not a close friend and was not informed about the claim by Mr Bell. In any event according to the respondent's disciplinary policy, a final written warning would be a reasonable sanction to apply in the circumstances given that that claimant had been working for the respondent for some months and had signed to say he had received fire training; and knew that it was a priority for the respondent to ensure all rooms were ready for guests.
118. Had Mr Alcock been motivated by the claimant's protected act, he is likely to have dismissed the claimant.
119. The inability to receive a pay increase and vouchers was a consequence of the final written warning under the terms of the respondent's disciplinary policy and again was not in any way influenced by the claimant's protected act.

Issue 8: On 24 May 2023 the claimant appealed against the final written warning, requested it not be before Mr Bell because he had told Mr Domingos to do the fact finding in the first place, but Mr Bell did it anyway

120. Mr Bell did hear the claimant's appeal. This was organized by ER. However, there can be no detriment to the claimant as he had accepted that Mr Bell could hear it.
121. Whilst it is accepted that Mr Bell was aware of the claimant's claim, there is no evidence to suggest that he heard the appeal because he was aware of the claimant's claim: it was because the claimant was an AHM in his region and it made sense for him to hear it.

122. This allegation is not upheld. There is no evidence to suggest that Mr Bell hearing his appeal was in any way influenced by the claimant's protected act.

Issue 9: Claimant's appeal was unsuccessful on 9 June 2023

123. It is accepted that the claimant's appeal was not upheld and that this was a detriment.

124. However, the Tribunal is satisfied that not upholding the appeal was an appropriate response based on the evidence. In particular, the fact that the appeal was partially upheld as regards the issues raised by the claimant in respect of the carpet demonstrates that Mr Bell considered the evidence carefully and gave a measured and proportionate response.

125. Whilst Mr Bell knew about the claimant's protected act there was no evidence before the Tribunal to suggest that he was motivated in any sense by it. As stated above, the claim related at that stage to the claimant's time at a different hotel.

126. The Tribunal is satisfied that Mr Bell was not motivated in any way by the fact that the claimant had done a protected act for reasons stated above. The appeal letter runs to five pages and demonstrates that the outcome was carefully considered and was based on the evidence before him.

Issue 10: The respondent decided to pay SSP and not to pay full pay when claimant was off sick 30 March – 30 April. Payroll (Martin Liggins) said in May (?) that he should get full pay but someone decided not to pay him. Possibly Mr Bell;

127. As stated above, the respondent has admitted that their failure to pay the claimant full pay (company sick pay (CSP)) was a mistake and has confirmed that it will pay the claimant the difference between the SSP received and CSP he is entitled to.

128. There is no evidence however, that any deliberate decision was taken to avoid paying the claimant CSP. Mr Liggins admitted that he must have misinterpreted the data. There is no evidence that this was anything other than a mistake.

129. Mr Liggins explained that this mistake was made in the context of a change in systems and he had to access the old system. Mr Liggins was unaware of the claimant's claim and there is no evidence to suggest that he was told by Mr Bell to withhold the CSP.

130. The allegation is not upheld as there is no evidence to suggest that the claimant's protected act was the reason for withholding the pay, or had any influence on that decision.

131. Whilst the matter has now been corrected, the Tribunal observes that this would have added to the claimant's sense of injustice given that he believed that he had been underpaid and, in fact, had been, and yet his requests for this to be reconsidered were rejected. The claimant owed money by the respondent but they denied it. The money would never have

been paid but for the claimant bringing this claim. This would inevitably affect the claimant's view of the respondent.

Issue 11: On 23 August the respondent subjected the claimant to a fact finding in relation to a fraud allegation of £19.92 and to leaving early

132. The Tribunal finds that the respondent did subject the claimant to a fact find in relation to the £19.92 and to leaving early and that this was a detriment.
133. However, it does not appear from the fact find notes that this allegation was one of fraud, but of a failure to follow process and procedure as the claimant failed to obtain authorization to take petty cash as he should have done.
134. In any event, Mrs Marascu still didn't know about the claimant's claim and Mr Bell was not involved. It was Mrs Marascu's decision with ER.
135. There is no evidence that ER acted as they did because of the claimant's claims rather than in response to the facts drawn to their attention, which related to acts committed by the claimant which were drawn to their attention.

Issue 12: On 23 August 2023 the respondent suspended the claimant for the fraud allegation of £19.92

136. It is important to note that, whilst the claimant was suspended, the fraud allegation related to his hours of work and not the cash issue. The Tribunal finds that it was unreasonable to suggest that the claimant had "stolen" £19.92 which is suggested by categorizing the theft as being in relation to the £19.92 and the record of hours) as it was clear from the fact that the claimant had left receipts that he was not stealing from the respondent but had breached cash handling procedures. Again, this would have added to the claimant's sense of injustice and that the respondent was out to get him.
137. Nonetheless, suspension is a common response to allegations of gross misconduct and here there were issues which properly fell for consideration as gross misconduct within the terms of the disciplinary policy.
138. In any event Mrs Marascu who decided to suspend the claimant was still not aware of the claimant's claim. Though she worked in consultation with ER, there is no suggestion from her that they had either mentioned the claimant's claim or that it had any influence. The claimant was suspended in line with the respondent's disciplinary policy in relation to the allegations faced because of his own conduct and not because he had brought a claim.

Issue 13: On 24 August 2023 the claimant was removed from the Whatsapp group

139. It is alleged by the respondent that this is not a detriment and the Tribunal agrees. The claimant did not point to a detriment.
140. The reason for it was to seek to avoid stress on the claimant as he was suspended. It was nothing to do with his protected act and was a decision

taken by ER. Whilst they were aware of the claimant's claim there is no evidence to suggest that they were in any way influenced by it.

Issue 14: On 4 October 2023 there was a final disciplinary meeting, where they added new allegations about the claimant leaving early.

141. This allegation was withdrawn with the agreement of the claimant and allegation 11 was amended to include the allegations about the claimant leaving early, which have already been dealt with.

Issue 15: On 20 October 2023, the claimant was dismissed

142. The claimant was dismissed from his employment with the respondent for gross misconduct by Miss Rostoka, which is a detriment.

143. The claimant had failed to follow the correct process for taking petty cash as he did not have the appropriate authorization which was required under the terms of the respondent's policy. Further, he had been leaving work early or arriving late without authorization which had the result that the claimant was being paid for hours he was not working.

144. The Tribunal does consider that allegations of theft, as stated above, in relation to the petty cash incident give the impression of a more serious act of misconduct than in fact occurred. There was no intention for the claimant to be dishonest: he had failed to obtain the correct authorization. Having left the receipt for the money and providing a clear paper trail that he had taken the money was not theft and should not have been considered as such.

145. Further, the claimant was aware that there were discrepancies between the times on the schedule prepared by Mrs Marascu and the timing of the receipt for his taxi which made him realize that the schedule couldn't be regarded as accurate. This was addressed by him in the disciplinary process but disregarded. Again, this would have contributed to the claimant's sense of injustice and that there was a campaign against him.

146. However, this Tribunal is not here to consider whether the claimant's dismissal was fair or unfair, but whether the decision to dismiss was made because the claimant had done a protected act. The Tribunal is satisfied that that is not the reason for dismissal, nor did it have any influence on the decision to dismiss the claimant. The fact he had brought a claim was irrelevant to the decision to dismiss. The claimant had failed to follow the respondent's policies and procedures as regards both timekeeping and not adjusting the rota and petty cash and the respondent dismissed the claimant for those reasons.

147. It is worth mentioning that the dismissing officer did not know that the claimant already had a live final written warning and had dismissed him for gross misconduct without taking the final written warning into account. The Tribunal considers that had ER been "out to get" the claimant, they would have drawn the final written warning to Miss Rostoka's attention to provide further evidence against him, and to make dismissal more likely.

148. Miss Rostoka did know about the claimant's claim, as he told her during the disciplinary process. However, during her oral evidence she was very

clear indeed that she made her decision on the evidence before her and was not in any way influenced by the fact that that claimant had brought a claim against the respondent. The Tribunal accepts her evidence in this regard.

Issue 16: The claimant's appeal against dismissal was rejected

149. It is accepted that the claimant's appeal was rejected and that this was a detriment.
150. Mr Rapson, a more senior manager than Miss Rostoka, was appointed to hear the appeal. The claimant had the opportunity to put his points at the appeal but his appeal was not upheld.
151. Mr Rapson was aware of the claimant's claim. However, the Tribunal is satisfied that the fact that the claimant had brought a claim had no part to play in the respondent's decision. Whilst the Tribunal's criticisms of the claimant's dismissal also apply to the appeal (as regards the allegation of theft and the timesheets which were incorrect), this was not a rehearing and there is nothing to suggest that Mr Rapson was in any way influenced by the fact that the claimant had done a protected act. In any event, he was told by ER to consider the facts of the case only and there is no evidence that he did not do so.
152. This allegation is not upheld.

Issue 17: The claimant did not receive his accrued outstanding holiday pay in his final pay slip

153. It is accepted that the claimant did not receive his accrued outstanding holiday pay in his final payslip. However, this was because the claimant had been overpaid in relation to the date of termination of his employment and so the respondent was recouping money which had been overpaid. The holiday pay the claimant was due was taken into account in determining what monies remained to be recouped from the claimant.
154. It is accepted that this was a detriment.
155. However, this had nothing whatsoever to do with the fact that the claimant had done a protected act. It was done because the claimant, on the respondent's calculation, owed the respondent money.
156. In conclusion, where the claimant was subjected to a detriment it was not because the claimant had done the protected act.

Employment Judge Rice – Birchall

Date 15 February 2024

**JUDGMENT & REASONS SENT TO THE PARTIES ON
6th March 2024**

FOR EMPLOYMENT TRIBUNALS

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