



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Ward

Respondent: C W Retailing Ltd.

HELD AT: Caernarfon **on:** 28 – 31 July 2025

BEFORE: Employment Judge T. Vincent Ryan
Mr B Roberts
Mrs Y Neves

REPRESENTATION:

Claimant: A Litigant in Person

Respondent: Ms P Hall, Solicitor

JUDGMENT having been sent to the parties on 10th September 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant's claims arise out of her dismissal which she attributes to her having made protected disclosures and having done protected acts, and her belief that she should be paid for hours worked in excess of her contractual hours; she was employed for less than two continuous years by the respondent and is not entitled to a claim of "ordinary" Unfair Dismissal.
2. The Claimant appeared as a litigant in person but was supported by a friend throughout the hearing up to but excluding delivery of judgment; she was also accompanied on every day except the last day for submissions and judgment by a former colleague who gave evidence for her, Mr Webb.
3. The Respondent was professionally represented.

The Claims & Issues:

4. The Claimant (C) claims

- 4.1. Automatic unfair dismissal contrary to section 103A Employment Rights Act 1996 (ERA), namely that she was dismissed where the reason (or, if more than one, the principal reason) for the dismissal was that she had made a protected disclosure or protected disclosures;
- 4.2. Victimisation contrary to section 27 Equality Act 2010 (EqA), that she was dismissed because she had done a protected act or protected acts.
- 4.3. That the Respondent (R) made unauthorised deductions from her wages in respect of time spent by her on managerial duties over and above her contracted 40 hours per week.
- 4.4. There were two case management preliminary hearings at which efforts were made to define the issues in the case, namely by Employment Judge Moore on 31 May 2024 and Employment Judge Othen on 4 November 2024. That said, on each occasion some matters were left for further clarification and there was no definitive list of issues at the outset of the hearing. In this situation we took some time during the introduction to the hearing, and before adjourning for further reading by the panel, to define the issues.
- 4.5. The Claimant confirmed that she withdrew her claim of automatic unfair dismissal because of a relevant transfer contrary to the TUPE Regulations 2006, and also a claim that she was dismissed by reason of having made a protected disclosure on 13 November 2023, the effective date of termination of employment being 2 October 2023. Those claims were dismissed upon withdrawal.
- 4.6. The agreed Liability Issues are listed below.

The Issues:

Automatic unfair dismissal

5. Was the reason or principal reason for C's dismissal, that C made a protected disclosure?

Protected disclosure

6. Did C make one or more qualifying disclosures (s.43B ERA)? The tribunal will decide:
 - 6.1. what did C say or write? When? To whom? C relies on the following disclosures:
 - 6.1.1. A verbal report by telephone to Tom Jones (area manager) on 14 August 2023 about theft/fraud by another employee (H). C says that she believes this to be in the public interest.

- 6.1.2. A report by e-mail and later by telephone to Tom Jones on 8 September 2023 about sexual harassment of a staff member (KB) by another staff member or members (GK and LC). As this involved employment issues regarding general staff, C says she believed this to be in the public interest.
- 6.1.3. Verbally challenging Tom Jones on 21 September 2023 for researching the medication used by another employee (AB) on her health questionnaire form with the intention of dismissing her in relation to it. As this involved employment issues regarding general staff C says that she believed this to be in the public interest.
- 6.1.4. C says she complained that she was owed pay for working in the region of 90 hours on managerial duties.
- 6.2. Did C disclose information? Did C believe the disclosure of information was made in the public interest? Was that belief reasonable? Did she believe it tended to show that:
 - 6.2.1. a criminal offence had been, was being or was likely to be committed (theft)
 - 6.2.2. a person had failed, was failing or was likely to fail to comply with any legal obligation?
- 6.3. There is no issue that if qualifying disclosures were made then they were protected because they were made to R, C's employer.

Victimisation

7. Did C do a protected act as follows:
 - 7.1. A report by e-mail and later by telephone to Tom Jones on 8 September 2023 about sexual harassment of a staff member (KB) by another staff member or members (GK and LC).
 - 7.2. Verbally challenging Tom Jones on 21 September 2023 for researching the medication used by another employee (AB) on her health questionnaire form with the intention of dismissing her in relation to it.
8. Did R dismiss C on 2nd October 2023 because C did a protected act?
9. Was it because R believed C had done, or might do, a protected act?

Unauthorised deductions

10. Did R make authorised deductions from C's wages and if so, how much was deducted?
11. Were the wages paid to C less than wages they should have been paid? Was any deduction required or authorised by statute? Was any deduction required or authorised by written term of the contract? Did C have a copy of the contract or written notice of the contract term before the deduction was made?

12. Did C agree in writing to the deduction before it was made?

13. How much is C owed?

Remedy Issues

14. We also agreed issues in respect of remedy, but they were not relevant in the light of the liability judgment, and remedy issues were not addressed nor evidence given, save in respect of wages claimed.

Witnesses:

15. For C we heard evidence from:

15.1. C, Mrs Ward

15.2. Mr Johnny Webb

15.3. AB

16. For R we heard evidence from:

16.1. Tomos (known as Tom) Jones, C's line manager, R's Area Manager, and the dismissing officer;

16.2. Ms Naomi Harrison, a former colleague of C's, a former employee of R's, and the person who succeeded C as manager for approximately 1 year;

16.3. Mr Ells Toseland, a former colleague of C's, a former employee of R's, who managed a different service station to that managed by C but who provided support and assistance to C;

16.4. Mr Chris Wright, R's Managing Director.

17. For R we read witness statements from the following who did not attend the hearing, were not under oath or affirmation and their evidence was not tested in cross examination (such that the Tribunal could not assess credibility save in respect of consistency with live testimony and documentary evidence, and so we attached such weight to these statements as they deserved in those circumstances):

17.1. KB - a former colleague of C's and former employee of R who made two allegations of sexual harassment (please refer to the findings of fact below) which C relies upon as protected disclosures made by her to Mr Tomos Jones;

17.2. LC - a former colleague of C's and former employee of R, referred to in an alleged protected disclosure by C;

17.3. OJ - a former colleague of C's and former employee of R, witness to some relevant events.

Documents:

18. Hearing bundle – In addition to an agreed bundle comprising 595 pages both parties made further piecemeal disclosure during the course of the hearing.

The Hearing:

19. Noteworthy interruptions to the hearing and matters raised by Mr Johnny Webb, either directly or via C:

- 19.1. that he had been approached by Naomi Harrison, a witness for R, by telephone the week before the hearing, when his phone rang briefly but he did not answer it; he did not speak to her; he did not know the reason for the approach; he was concerned about it. I said that C could ask her about it when she gave her evidence as she was not present when the matter was raised. When she gave her evidence, Ms Harrison explained that she was in her car when she attempted to speed-dial her brother whose name is Johnny, but she accidentally pressed Mr Johnny Webb's contact number; immediately realising her mistake, she discontinued the "call", which as I said had not been answered. The panel accepted that explanation.
- 19.2. that after he had given his evidence and while other witnesses were giving their evidence Mr Tom Jones, at that time sitting behind Ms Hall the solicitor representing R, he appeared to be using his phone, then clarified to be "apparently scrolling". I reminded all parties that phones should not be used during the hearing and that it is an offence to record proceedings; I stated my preference that all phones be switched off and left outside the room or out of reach.
- 19.3. that while Mr. Wright was giving his evidence under cross examination he was looking at, made faces at, or rolled his eyes at Mr Webb who was sitting next to C while she was asking the questions. Mr. Wright denied this. I invited Mr Webb to sit further back in the room away from the direct eye-line of Mr. Wright. Before cross examination had finished, I gave C the opportunity to consult with Mr Webb to ensure that they were satisfied all questions had been asked in cross examination before Mr. Wright was excused.
- 19.4. Mr Webb also corrected me when I inadvertently referred to C as Mrs Hall on one occasion at the early stages of day 1, and he interrupted the flow later to inquire whether anybody wanted the windows to be closed because of traffic noise outside (where the windows were left open because the room was very warm). These were minor interruptions and caused little inconvenience and no significant disruption in themselves.
- 19.5. My overall concern, let alone the facts of the case involving Mr Webb as detailed below, was that he was a distraction to C, but she did not seem concerned. I am satisfied that she was able to present her case as she had prepared it, answering questions in cross examination without any apparent confusion and asking her questions in cross examination in an ordered and clear way. I am satisfied that despite all the above this was a fair hearing; indeed, nobody complained otherwise. The fact that both C and Mr Webb were

comfortable raising each of the above matters with me in open Tribunal gives me re-assurance that they felt at sufficient ease to complain if they had grounds to; they did not complain otherwise than as indicated above.

The Facts

20. The respondent (R): R is a relatively large employer. At the material time it employed approximately 95 employees in 8 - 10 service stations including that at Porthaethwy/Menai Bridge, Ynys Mon/Anglesey. Mr Wright is the Managing Director; Mr Tomos Jones is the area manager in question, having we think three other garages under his management, including one at Black Cat roundabout, Llandudno Junction, and at Betws y Coed; his area stretched a distance of approximately 120 miles from each extreme. Each service station had its own manager. Each service station manager had a written statement of employment particulars and a job description. The manager was responsible to allocate hours to staff and arrange start rotas. The manager would be contracted to perform a certain number of hours of managerial duties, and they would also on occasion be expected to cover the staff till rota if a staff member was absent. Managerial work was salaried at the appropriate rate; till rota shifts were paid at an hourly rate for shop-floor staff.
21. Britannia service station Porthaethwy/Menai Bridge: This is a 24/7 service station. At the time that C was its manager it had a high staff turn over, with approximately 20 employees leaving their employment in a six month period. We accept that this was a higher turnover than all other garages in the relevant area managed by Mr. Jones put together. We accept the evidence of Ms Harrison who succeeded the claimant when she said that four or five members of staff left employment during the one year of her managership, and the evidence of Mr Toseland that in the garage he managed at Betws y Coed, 3 or 4 employees left over a nine month period.
22. The claimant (C): C Was employed by R at Britannia service station as the manager from 21 June 2022 until her dismissal on 2 October 2023. She had some 40 years prior experience in the retail business, but the tribunal was not told whether this was at managerial level. C's written statement of employment particulars is at page 89 of the bundle; she had also signed a waiver under the Working Time Regulations.

Wages:

23. C's contract provided for a flexible approach to working hours, which was stated as being 40 hours per week according to a rota, with additional hours being required for the needs of the business. It is clear that there was different treatment of additional managerial hours and till cover. Where additional hours were worked on the till, the manager would be paid at the shop operative rate; additional managerial hours were recompensed by time off in lieu (TOIL) or a compensatory payment. The contract provides "we must authorise such hours in advance". C recorded accumulated additional hours over several months. R paid her a bonus on an ex gratia basis in November 2022 as a mark of appreciation. On 11 March 2023 C submitted hours that she said she had worked in addition to her 40 hour contractual week in October - December 2022 (email at p553); although she sent this e-mail to R in March, she did not refer to any additional hours that she said she

had worked in the period from January to March 2023. She calculated that she was “owed” £1,573.31. Believing that R would not pay her that sum, she proposed that the parties meet halfway; in that spirit R made a payment to her of £785. At the meeting where this was agreed R re emphasised that additional management hours would not be recompensed either by payment or TOIL unless prior authority was given for them to be worked. R believed that a line had been drawn in respect of additional management hours worked to that date and was unaware of any suggestion that C had worked additional hours in 2023 for which she required recompense. C did not disabuse R of that belief in March 2023 when she accepted the said payment.

24. On 30 August 2023 C sent an e-mail to Mr. Jones saying that she would like to book paid time off “for some of the additional hours I have worked in the last eight months”, and she requested time off from 1st October 2023 to the 8th of October 2023. That e-mail is at page 284. The e-mail does not disclose any information save for C’s belief that she had worked additional hours and her wish to have time off.
25. On 8 September 2023 C emailed Mr Jones chasing a reply (also p284). The e-mail just requests a reply to the earlier e-mail and does not disclose any information.
26. On 12 September 2023 C emailed Mr. Jones again simply with the words “with thanks” but effectively reissuing the above 2 emails (p283). This information did not itself disclose any information.
27. On 13 September 2023 Mr. Jones replied to C, suggesting that they meet to discuss and sort out holidays. When they met Mr. Jones asked for details of the additional work carried out by C. He could not understand how she had accumulated the number of hours that she claimed, and why she needed time off; he considered that she had taken a considerable amount of time off already and was not convinced, without speaking to her, that she could justify further time off. Mr. Jones wanted to know what it was that C did in the additional hours she says she had worked so that he could consider whether those hours were justifiable in terms of work undertaken that was necessary. By the date of dismissal, he had not received the details that he had requested or information that satisfied him that authorisation could even be given retrospectively (although that was not his main consideration; he wanted to know what C was doing in the hours claimed).
28. C conceded, and the tribunal accepts as fact, that she did not ask for or ever receive authorisation to undertake the additional Management hours claimed by her in 2023, in advance of working with them (or for that matter retrospectively).

Performance Review

29. When C was on leave and absent from Britannia service station in early August 2023 Mr. Jones visited the site. These were managerially supportive site visits and also to follow up on audits. Mr Webb asked to speak to Mr. Jones and told him of his concern at the management of Britannia service station, including informing him of the staff's reluctance to speak directly to C about any issues that arose, that he had to liaise between staff and C, that some staff were wary of her, and that this situation contributed to the high turnover of staff. Naomi Harrison, two others

expressed similar concerns to Mr. Jones, but not for as long or in as much detail as the main informant, Mr Webb.

30. In evidence Mr Webb said that his comments were really a criticism of Mr. Jones, as Area Manager, and not of C. Having said that, he conceded his belief that when Mr. Jones left the site he, Mr. Jones, would have understood that the criticism was being made of C. Mr Jones was clear that the criticism was aimed at C. The tribunal finds that Mr Webb informed Mr. Jones of C's difficulties in managing the site, the poor relationship between staff and C, and the effect that this situation had on both staff morale and turnover.
31. In the light of Mr Webb's report, Mr. Jones decided that he would give managerial support and guidance to C by way of a review; he said so to Mr Webb in one way or another but without suggesting any form of performance management, let alone that he would "performance manage" C out of the business. His intention was in fact constructive performance review and management.
32. On her return to work Mr Webb informed C that Mr Jones was going to performance manage her. This made the claimant defensive, feeling that she was under scrutiny and that her position was insecure.
33. Mr. Jones met with C on her return to work and the initial meeting lasted approximately 4 hours. Mr. Jones reviewed C's performance with her and found it difficult as she became emotional; she was sensitive to what she considered unreasonable criticism. Given the length of the meeting and difficulty encountered, it was decided to reconvene on the 18th of August 2023. Mr. Jones subsequently emailed C on the 19th of August sending her a prepared form for use as a formal review which was scheduled for the 24th of August. The form was an appraisal form giving C an opportunity to mark herself first and then to discuss her performance and her marks with Mr. Jones so that he could put his marks, comments, set objectives etc. The review went ahead on the 24th of August. The completed review form, dated 28th August, is at page 112; that was the day that Mr Jones completed his review scoring in the light of all that had been discussed. He gave it to C on 30 August 2023.
34. The tribunal finds that Mr Jones' completion of the Retailing - Performance Review form and his scoring, setting of objectives, and action points, with guidance notes, and his overview, were a genuine and conscientious attempt to give a fair appraisal to C and to assist her in the performance of her managerial duties henceforth. It was a constructive review and form of performance management. Mr. Jones was not unreasonably critical of the claimant. He was not setting C up to fail, or micro-managing; he was not nit-picking or otherwise looking for faults. He was not engineering her exit from the business. The review document was Mr Jones' attempt to support C's continued employment for the good of R's business.

Mutual attitudes of C and Tomos Jones to each other post Performance Review

35. Both Mr. Jones and C said in evidence that attitudes changed post performance review.
36. The tribunal finds that C's attitude towards Mr. Jones changed for the worse, in that she was resentful of the review document as completed by Mr. Jones; she was

defensive, and she was henceforth unwilling to comply with his managerial instructions.

37. C said to Ms Harrison that she was no longer prepared to do what Mr. Jones told her. C said: ““I’m not fucking doing what he tells me”. Ms Harrison informed Mr. Jones of this.
38. Save for the expressed opinion of C, there is no evidence before the tribunal that Mr. Jones's attitude to her changed because of the performance review, rather that it changed when she did not take the advised and instructed actions to address the identified performance concerns.
39. Mr. Jones changed from being supportive of C's continued employment to dismissing her because C did not take the actions he required towards the objectives he set in accordance with the guidance he gave her, all of which was contained in the performance review document; added to this she did not provide him with what he considered reasonable justification for the additional managerial hours she was working because he could not see what she had done in that time. He was aware from Ms Harrison that C had said openly that she was no longer prepared to follow his instructions.

The matter of H, then an employee of R

40. C accused H of theft having seen him on CCTV acting in a way that she thought was suspicious. C accused several staff members of theft during her managership of Britannia, and this was an issue which in some instances led to resignations. H could be seen removing cash from a bag; there seemed to be something unusual in the way that he was operating refunds. C showed the CCTV to Ms Harrison as supervisor, and for reasons that were never made clear to us save that he was on the premises, she also allowed Mr Webb to see it. Ms Harrison gave evidence to the effect that she did not consider there was proof that H was stealing, and she said so. Mr Webb seemed supportive of C's suspicion that H was stealing. C telephoned Mr. Jones to accuse H. Mr. Jones indicated to C, and noted, that H would be removed from the business by a given date; the tribunal accepts that this was not a firm decision by Mr. Jones to dismiss H for theft, but it was part of a timeline during which he intended to carry out an investigation. Mr. Jones was not convinced by the CCTV evidence that there had been any theft, and on reconciling the books it transpired that there was not only no loss of money but that there was more cash at the store than there should have been on the day in question. It seemed to Mr. Jones that H had made a mistake operating refunds and that this was a training issue, but that it had not caused any loss to the business. He decided to take no further action.
41. When C made her allegation against H, she believed that there had been theft from what appeared to be suspicious activity observed on CCTV. She saw H remove money from a bag, so she had grounds for being suspicious at that point; what he was doing with regard to the cash and refunds appeared odd initially. When Mr. Jones ascertained that there had been no financial loss to the business there were no grounds for C to believe that there had been theft.

The matter of KB then an employee of R

42. KB is a woman. On 9 August 2023 KB said to C that she felt uncomfortable at a conversation that two other colleagues, LC&GK, were having when they used inappropriate sexualised language to each other, and also when GK made an explicitly sexualised remark to her. On that morning C wrote to Mr. Jones to inform him of this and to express the opinion that LC should have stopped the inappropriate conversation; she also commented that he was within earshot of GK's remark directly to KB. She said that she had not discussed the matter with LC, had reassured KB that the language and behaviour was not acceptable, and she told Mr. Jones that she would speak to GK about it.
43. C disclosed information to Mr. Jones, an allegation of sexual harassment at work, which she said she would deal with directly with GK. C believed that the allegation was of an assault and of sex discrimination. She was not asking Mr. Jones to take any action, but it was later agreed that he would speak to LC about the matter, and he did. Mr. Jones told C that she should give KB the opportunity to raise a formal grievance; C did not do this; at this stage KB did not take the matter further and did not raise a grievance.
44. In the above circumstances, Mr. Jones considered that there was nothing further required of him at that time, and that C was merely reporting the incident which she would deal with directly with GK. He was not aware of any other allegation of sexual impropriety by GK towards KB. Mr. Jones did not hear any further about the matter until after C's appeal against dismissal (see below).
45. Subsequently, in her appeal against dismissal on 24 October 2023, C gave the same information as above to Mr. Wright, and a further allegation of inappropriate physical touching by GK that was made by KB. Mr. Wright was unaware of all this, and he instructed Mr. Jones to investigate the matter. Mr. Jones spoke to KB who confirmed that she had not been given the opportunity to grieve about the first incident; she reassured Mr. Jones that she was not concerned at the behaviour of LC, with whom she continued to work happily; KB then presented a formal grievance about GK (this was after C's dismissal).

The matter of AB, an applicant for employment with R

46. C was responsible for recruitment at Britannia service station. R had produced a written recruitment policy and procedure that was circulated to station managers. The procedure required a number of steps to be taken, including that the recruiter would take up employment references before appointment and would carry out any necessary risk assessments. C did not comply with the recruitment policy when she recruited AB. C did however ask her to complete a Lone Worker Health Assessment Questionnaire as AB was recruited to work in the service station alone at night. On that form AB confirmed that she did not suffer from any of a number of listed medical conditions, but that she had a visual impairment and that she took prescribed medication namely paroxetine and aripiprazole. In answer to the question whether she had any medical conditions she answered that she had asthma.
47. C did not inquire about or research the disclosed medication. She did not carry out a risk assessment in respect of AB as a lone worker working at night when taking

prescribed medication. C did not take up employment references before confirming appointment/ trial shift.

48. Mr. Jones carried out a Google search in relation to the disclosed medication and discovered its potential side effects. Without any further inquiry of AB, he terminated the recruitment and cancelled the trial shift. AB suspected that this was a prejudicial step on the basis of her religion, as she wore a hijab and did not shake Mr Jones's hand because she would not touch him. AB did not say that she considered herself to be or indicated that she was or might be a disabled person and for all C, Mr Jones, and the Tribunal are concerned she is not.
49. On 21 September 2023 C challenged Mr. Jones about checking up on AB's medication online without speaking to her about its potential side effects. She thought it would be fair to speak to AB before coming to any conclusion about side effects and before terminating the recruitment. She stated her opinion as to better practice; she did not disclose any information. She did not allege or intimate that Mr Jones had breached the Equality Act (howsoever informally or non-technically that may be). C merely challenged Mr. Jones over his online search and for not speaking to AB directly. C did not raise with Mr. Jones AB's principal concern, which was that she had been discriminated against in relation to her religion or philosophical belief.

C's dismissal

50. Mr. Jones was very concerned about the matters raised with him by Mr Webb and other employees about C's management style and performance in that role. He provided support and guidance, including by way of performance review, the setting of objectives, specifying required actions and providing guidance notes in respect of them. As referred to above, written details of these objectives, action points, and guidance notes were given to C on 30th of August 2023.
51. In following up on this review, Mr. Jones was not satisfied with C's compliance with required action points. He did not consider that she was achieving her objectives. He formed the view that she was not following his guidance. Mr. Jones was aware that C had made it known, at least to Naomi Harrison and Johnny Webb, that she was not prepared to do what he told her to do and that she had expressed this explicitly. The claimant admits to saying aloud, as if exclaiming, "I'm not fucking doing what he tells me". The Tribunal accepts the evidence of Naomi Harrison that C actually said it to her.
52. On 1st October 2023 Mr. Jones sent an e-mail to C to arrange a meeting the following day at Black Cat service station, and he instructed her to cancel any plans that she had, so that she could attend it.
53. As arranged, C met with Mr. Jones on 2nd October 2023, and he dismissed her. He confirmed the reasons for the dismissal that he explained to her, in a letter dated 2 October 2023. Mr. Jones was concerned about C's suitability for continued employment as service station manager, and the needs and good of R's business.
54. Mr. Jones took the decision to dismiss C. He dismissed C for the reasons stated by him in his letter of 2nd October 2023 at page 130 namely:

- 54.1. A serious breakdown in trust and the working relationship between them
- 54.2. a “complete change in attitude and demeanour” shown towards Mr. Jones since he carried out the performance review in August.
- 54.3. C’s failure to follow management instructions
- 54.4. The performance concerns that were raised in the said performance review that she had not addressed.
55. Mr. Jones did not dismiss C for any reason related to what the Claimant said about the above mentioned incidents regarding H, KB, or AB. Although there were aspects of C’s management style and performance that were reflected in the way that she dealt with the incidents involving each of those three named employees, C was not dismissed for raising those matters or issues related to those three people with Mr. Jones. C had failed to follow the recruitment policy in respect of AB, and had failed to give KB an opportunity to raise a grievance, which were further examples of failing to follow instructions, and in that regard those failures were in Mr Jones’ mind; they were not the only such failures
56. C had not returned to Mr Jones with details of the hours said to have been worked in excess of 40 per week to justify consideration of retrospective payment, or by way of explanation of her time management regardless of payment. Mr Jones considered that matter closed before deciding on dismissal. The fact of the Claimant having ever raised the matter (as she had done in March when the parties agreed a compromise settlement without difficulty) was not part of the decision to dismiss and did not influence it.

The Law

57. As explained at various stages of the hearing, the relevant law on the matter is effectively summarised in the list of issues.
58. With regard to C’s dismissal the key question was “why was she dismissed?” Because C was not employed for two years continuously to the effective date of termination, this is not a case of ordinary Unfair Dismissal where it is incumbent on a respondent to prove that the reason for dismissal was a potentially fair one and that it acted fairly and reasonably in treating that reason a sufficient reason to dismiss.
59. In this case it was for C to prove that she was dismissed either because she had made protected disclosures (for “whistleblowing”) or because she had done a protected act (victimisation). The question is one of causation.
60. Disclosure involves the giving of information. It is not the stating of an opinion or merely voicing a grievance or complaint (albeit in doing so one may additionally disclose information). It must be more than just a criticism of a business practise or a particular action by an employer. C must show that she gave information that qualifies for protection, and in this case information that she reasonably believed showed a criminal offence had been committed or was likely to be committed, or that a person had failed or was failing or likely to fail to comply with a legal

obligation. The disclosure must be made in the public interest or at least the claimant must reasonably believe that to be the case. A person making a disclosure may be wrong, but they must reasonably believe they are not.

61. C would be automatically unfairly dismissed if the reason for dismissal, or, if more than one, the principal reason for dismissal, was that she had made a protected disclosure. The tribunal would have to consider the extent to which, if at all, any protected disclosure had influenced the decision to dismiss or whether it was the principal reason for dismissal.
62. In similar vein it would amount to victimisation if C was dismissed because she had done a protected act. A protected act would include giving evidence or information in connection with protections given by EqA, protection against discrimination, or making any allegation that somebody had contravened EqA, such as by discriminating against someone on the grounds of sex or disability.
63. if a claimant can show that they have done a protected act, subjecting them to detriment, such as by dismissal, would amount to victimisation.

Submissions

64. R made oral submissions, and C presented a written submission.
65. In her oral submission Mrs Hall took the tribunal through the list of issues in some detail, cross referencing the evidence we had heard and the documentary evidence available. She did not make any particular or detailed legal submissions or cite any case law that needed further explanation. I am satisfied that C understood R's submissions.
66. C's written submission is relatively short and sets out her contention that she ought to succeed in reliance at least in part on the evidence of Mr Webb and AB, stressing also that other station managers received more than one performance review, her point being that she did not have sufficient managerial support. She submitted that Mr Toseland was able to manage his own excess hours without obtaining prior permission (although the tribunal notes that Mr Toseland's evidence was that he would do that by taking time off in lieu and he did not say that he was paid for unauthorised additional hours worked in management duties). C submitted that she was unfairly dismissed and was owed the money claimed.

Application of Law to Facts - Judgment:

The Issues addressed specifically:

Automatic unfair dismissal

67. *Was the reason or principal reason for the claimant's dismissal, that the claimant made a protected disclosure?* No. The Claimant was dismissed for the reasons stated in the letter of dismissal dated 2 October 2023 (page 130) and Mr Jones' decision was not influenced by the Claimant raising the matters of H, AB, KB or her claims for wages for managerial hours worked in excess of her contractual hours. The breakdown in relationship was due to the change in C's attitude and demeanour following the Performance Review, which she took to be negative

performance management, in line with what she had been told by Mr Webb. She had made it known that she would not do anything that Mr Jones told her to do and it is not surprising that he considered she had not followed management instructions or addressed the concerns raised in the review.

Protected disclosure

68. *Did the claimant make one or more qualifying disclosures (s.43B ERA)? The tribunal will decide:*

68.1. *what did the claimant say or write? When? To whom? The claimant relies on the following:*

68.1.1. The Claimant disclosed her suspicions that H had stolen money, that he had been seen taking cash from a bag and doing something unusual in managing refunds. The Tribunal finds that initially this was a disclosure of information to Mr Jones tending to show criminality and breach of obligations owed to R.

68.1.2. *The Claimant disclosed to Mr Jones in an email and on the telephone that KB had been sexually harassed at work.* The Tribunal finds that C did disclose this information, again amounting to criminality and breach of legal obligation, to Mr Jones.

68.1.3. *The Claimant challenged Mr Jones orally on 21 September 2023 about carrying out an internet search into AB's medication and terminating her recruitment without first speaking to her about her medication.* The Tribunal finds that no information was disclosed; this was a statement of opinion and suggestion of an alternative way in which Mr Jones could have dealt with an issue.

68.1.4. *The Claimant spoke to Mr Jones on 28 July 2023, and sent emails on 30 August 2023, 8 September 2023 and 12 September 2023 asking for, or referring to her request for, time off in relation to her having worked in excess of 40 hours per week on managerial duties.* These emails were a request and a reminder that the request was outstanding. No information tending to show criminality or breach of duty was disclosed.

68.2. *Did they disclose information? Did they believe the disclosure of information was made in the public interest? Was that belief reasonable? Did she believe it tended to show that:*

68.2.1. *a criminal offence had been, was being or was likely to be committed:* the matters in respect of H and KB could have involved criminality and C genuinely believed that they did. She told Mr Jones what she had seen in relation to H and what she had been told in relation to KB; she disclosed information. It was reasonable to believe that uncovering theft and preventing sexual impropriety would be in the public interest, setting a proper and lawful standard at work in a public facing retail environment. Her belief was reasonable in respect of KB; it was only reasonable in respect of H until it was proved by Mr Jones that there was no theft.

- 68.2.2. *a person had failed, was failing or was likely to fail to comply with any legal obligation?* R had a legal obligation to protect its staff from sexual harassment; C would have been failing in her duty in relation to KB if she had not taken action. C'S disclosure in relation to H was of his alleged breach of obligations to R and potential criminality; her disclosures in relation to KB were of breaches of legal obligation by GK and LC towards their colleague, and by extension towards R, and potential criminality. C did not allege failures by the Respondent.
- 68.3. *There is no issue that if Qualifying disclosures were made then they were protected because they were made to the respondent, the claimants employer.*
- 68.4. For the above reasons C made protected disclosures in relation to H and KB. She had made protected disclosures in respect of H's cash handling and refund management, and KB's report of sexually harassing comments by LC and GK. The Claimant made a protected disclosure of sexual harassment by unwanted touching (of KB by GK) post-termination of employment, and not during employment.
- 68.5. C did not make a protected disclosure in relation to her wages or AB. She made a request in respect of her wages. She criticised Mr Jones in respect of AB and suggested an alternative way of managing that situation.
- 68.6. C was not dismissed because she had made any disclosures, whether protected or not.
- 68.7. The claim of Automatic Unfair Dismissal in relation to "whistleblowing" fails and is dismissed.

Victimisation

69. Did C do a protected act as follows:

- 69.1. *A report by e-mail and later by telephone to Tom Jones on 8 September 2023 about sexual harassment of one staff member by another staff member. As this involved employment issues regarding general staff, the claimant believed this to be in the public interest.* Yes, C repeated an allegation of sexual harassment which is a form of discrimination contrary to the Equality Act 2010. This was a protected act.
- 69.2. *Verbally challenging Tom Jones on 21 September 2023 for researching medication used by another employee (AB) on her health questionnaire form with the intention of dismissing her in relation to it. As this involved employment issues regarding general staff, the claimant believed this to be in the public interest.* No, C merely criticised Mr. Jones for doing an internet search into disclosed medication and suggested that he should have spoken to AB about the effects of that medication before terminating AB's recruitment. This was not couched in terms, however informally, of a breach of EqA. C did not know or had no good reason to believe AB to be a disabled person. She had recruited AB and wanted the recruitment to continue, feeling that Mr Jones was harsh in acting on the basis of an internet search alone. This was not a protected act.

70. *Did the respondent dismiss the claimant on 2nd October 2023 because the claimant did a protected act?* No. The claimant was dismissed for the reasons stated in the letter of dismissal. The issues concerning KB were irrelevant to Mr Jones's rationale for dismissal. The only part that matters involving AB played in Mr Jones's rationale, was that C had failed to follow R's recruitment procedure; Mr. Jones was not influenced by C challenging him on conducting an Internet search and terminating the recruitment without speaking to AB. Even if the Tribunal is wrong as to whether or not either the challenge in relation to AB was a protected act, that challenge did not form the basis of the breakdown in working relationship, reflect the change in attitude and demeanour towards Mr. Jones about which he was concerned, indicate a failure to follow management instructions, or comprise one of the concerns raised in the performance review that C left unaddressed.
71. *was it because the respondent believed the claimant had done, or might do, a protected act?* No. R did not believe that C had done a protected act or would do so.
72. The Victimisation claim fails and is dismissed.

Unauthorised deductions

73. *Did the respondent make an authorised deductions from the claimant's wages and if so, how much was deducted?* No. C was paid all wages earned by her in accordance with her contract performing 40 hours per week of managerial duties and when she provided cover on the tills. C was required by her contract to obtain prior approval to work managerial hours in addition to 40 per week, and this was reinforced to her when R met her halfway in paying something towards hours in excess of 40 per week that she had worked at the end of 2022. At that point R reiterated the need to obtain prior approval for any additional managerial hours. C did not obtain prior approval to work any additional managerial hours in 2023. When asked by Mr. Jones to justify her claim that she had worked excessive hours she did not do so. C was not entitled to payment for "excessive" hours. No deduction was made from her wages.
74. *Were the wages paid to the claimant less than wages they should have been paid?*
- No. The wages claim fails and is dismissed.

Approved by Employment Judge T V Ryan

Date: 07.08.25

JUDGMENT SENT TO THE PARTIES ON
12 August 2025

FOR THE TRIBUNAL OFFICE

Adam Holborn