EMPLOYMENT TRIBUNALS

Claimant: Barna Farkas

Respondent*:* Compass Group, UK and Ireland Limited

OPEN PRELIMINARY HEARING

By CVP **On**: 30 September, 1 October and 17 and 18 November 2025

Before: Employment Judge Nicolle

Representation:
For the Claimant: In person
For the Respondent: Mr A Joicey, in-house non legal representative.

JUDGMENT

1. The claim for ordinary unfair dismissal pursuant to section 98 (4) of the Employment Rights Act 1996 (the ERA) fails and is dismissed.

REASONS

The Hearing

2. The Claimant gave witness evidence and Gary Wolfe, who at the material time was the Head Chef for Hospitality, (Mr Wolfe), Daniel Lemmon, Deputy Account Director (Mr Lemmon) and David Booth who at the relevant time was Account Director with overall accountability for the Respondent's contract with Bank of America (Mr Booth) gave evidence on the Respondent's behalf. Mr Wolfe was unable to complete his evidence during the originally listed dates given that he was required to attend his gravely ill father. It was therefore necessary to relist the hearing for 17 and 18 November 2025 when Mr Wolfe completed his evidence and the Claimant gave evidence.

3. There was a bundle of documents comprising of 400 pages.

Timetabling of the hearing

4. The case had originally been listed for 2 days. For a claim of unfair dismissal this should have been adequate. However, the first half day was lost as result of the Tribunal administration failing to book the services of a Hungarian interpreter. I became increasingly concerned that the 2 additional days booked, which should have been more than adequate, may not be sufficient to complete the case. The entirety of the first morning was taken up by the Claimant's various applications. Further, I was concerned that he was to a large extent seeking to put questions in cross examination which would have been predicated on his amendment application, to introduce a claim of protected disclosure and detriments and/or automatically unfair dismissal having been accepted, to the witnesses. I repeatedly had to advise him to move on from the subject he continued to revisit of alleged deficiencies in the Respondent's food hygiene procedures and focus on the matters which were directly relevant to his claim of unfair dismissal. He was reluctant to do so. It therefore became necessary for me to timetable the hearing on 18 November 2025 to provide a limit not only in the Claimant's continuing cross examination of Mr Wolfe, but in Mr Joicey's cross examination of the Claimant. I also gave time limits to closing submissions. Notwithstanding this proactive timetabling the hearing did not finish until 450 on 18 November and had I not adopted this proactive stance the case would have gone part heard, which would have been wholly inappropriate and inconsistent with the overriding objective, but also prejudicial to the needs of other Tribunal users with the very significant backlog of cases.

The Hungarian Interpreters

5. The names of the Hungarian interpreters have been anonymised given the criticisms made of them by the Claimant. However, as his contentions regarding the quality of the interpretation are material to various applications he made and the general conduct of the claim it is necessary to set out the issues which arose.

6. After initial case management issues were addressed with the parties I enquired of the Claimant whether he had an issue with the English language. Whilst he appeared to communicate coherently in English, I was aware that he is Hungarian and may therefore have some difficulties of comprehension. He informed me that he had ticked the box requesting the services of a Hungarian interpreter. Unfortunately, this had not been actioned by the Tribunal administrative staff. I therefore agreed to adjourn the hearing whilst the Tribunal administration made enquiries as to whether it would be possible at short notice to secure the services of a Hungarian interpreter. This proved possible and the hearing was able to commence at 2pm on 30 September 2025 with Interpreter A, a Hungarian interpreter. Interpreter A is DPSI qualified in the legal field and NRPSI registered. Given the delay in commencing the hearing I agreed with the parties that the original listing of 2 days would be extended to include, if necessary, 2 October 2025.

The Claimant's dissatisfaction with the Hungarian interpreter

7. Whilst I did not notice any difficulties with Interpreter A's interpretation the Claimant made continual complaints regarding the quality and accuracy of her interpretation. He contended that Interpreter A's interpretation is not as good as

the services of previous interpreters he has benefited from and was concerned that she does not have the required experience in a legal setting. He said that Interpreter A was reluctant to interpret longer passages of Hungarian text and had mistakenly interpreted various legal terms.

8. On numerous occasions I advised the Claimant that the process of giving evidence via an interpreter would be facilitated by him asking short questions and allowing her to interpret them. Unfortunately, despite this guidance the Claimant persisted in making very long statements which were difficult to interpret in full and in many incidences did not involve him putting a question to the witness. There were a number of occasions where I had to ask him to desist from continuing to speak when the interpreter was translating previous answers he had given.

The Claimant's application for an adjournment

9. As result of the Claimant's dissatisfaction with the services provided by Interpreter A, he made an application to postpone the hearing so that the services of an alternative Hungarian interpreter could be secured. It is, of course, difficult to assess the quality of interpretation but I did not detect any obvious inconsistencies as Interpreter A was able to make reference to his application to amend, his wish to add a claim that he had been dismissed for a reason or principal reason that he had made a protected disclosure pursuant to s.103A of the ERA and so on. It was therefore not apparent to me that there were any obvious oversights in her interpretation.

The Respondent's position

10. Mr Joicey objected to a potential adjournment as he is concerned that there would be wasted expense and time given that the Respondent's witnesses have had the date in their diaries for a long time and could be otherwise deployed. He is also concerned that a significant further delay could have a prejudicial effect on the Respondent's evidence given the passage of time and the fading of memories. He is also concerned given the Claimant's allegations regarding the Respondent's witnesses that they have this hanging over them for a potentially significantly longer time.

11. I made enquiries of the Tribunal administration as to whether an alternative Hungarian interpreter would be available for 1 and 2 October should I consider it appropriate to grant his request for a change of interpreter. I was informed that no alternative Hungarian interpreter would be available in this timescale and therefore if his application were to be successful the hearing would be postponed and there would be a significant delay before it could be relisted. I was also concerned that given the Claimant's approach of putting very long questions, which were actually often more his giving evidence than asking a question, that his expressing concern regarding the quality of the interpreter may recur.

My decision on the Claimant's adjournment application

12. I refused the Claimant's application for an adjournment. I consider that a relatively high bar exists to justify an adjournment based on an interpreter's purported deficiencies. An adjournment may, for example, be appropriate an interpreter has been booked who whilst speaking the language of a particular country is not familiar with a regional linguistic or dialect variation. I had established with the Claimant that it is a Hungarian to English interpreter and there is no basis to suggest that Interpreter A is not fluent in both English and Hungarian. Therefore absent any substantiated criticism of her interpretation I consider that it would be wholly disproportionate to adjourn the hearing. It would also involve unwarranted prejudice to the Respondent. Further it would involve a significant waste of public money, given that the interpreter has been booked and will need to be paid, but also there has not been a full day of Tribunal and judicial time allocated to the case.

Interpreter A unwilling to continue

13. As result of the Claimant's incessant criticisms of her interpretation Interpreter A indicated before lunch on 1 October 2025 that she was unwilling to continue. I understood why she was of this view but was able to gently persuade her to remain in attendance so that the evidence of Mr Booth could be heard that afternoon.

14. It was, however, agreed that a different Hungarian interpreter would be booked for the remainder of the hearing.

Further issues with the interpreter at the reconvened hearing

15. At the reconvened hearing on 17 November 2025 the Claimant had the services of a different Hungarian interpreter (Interpreter B). Prior to lunch I asked the Claimant to confirm that he was satisfied with her services given the issues he had raised at the previous hearing. He confirmed that he was. I was, however, concerned that the Claimant appeared to be having regular conversations in Hungarian with Interpreter B outside the scope of the material which she was interpreting as part of the proceedings. I advised the Claimant to desist from this.

16. On the evening of 17 November 2025 Interpreter B sent me the following email:

"Dear Judge Nicolle,

I am writing to respectfully let you know that the interpretation process was quite challenging due to frequent interruptions, consistent corrections -as to what I should and should not interpret , how to interpret, when exactly to start and stop interpreting- by the Claimant. The Claimant acted more like a quality assessor and was asking me questions about my qualification at the very beginning and behaved in a quite superior manner regarding the content of what he said , not his style. However, it is not the challenge itself but the Claimant's attitude which caused me great stress and difficulty.

I have been an interpreter for 18 years, a court interpreter for more than 10 years and I have never encountered such an attitude.

I have been contemplating whether to proceed with the second day of the hearing in my role as an interpreter and due to the above mentioned reasons I have decided to make a request to withdraw from the second day of the hearing. I am now going to cancel tomorrow's job with TBW now so that they will have time to assign another interpreter.

Thank you for your understanding
NRPSI registered interpreter"

17. On the morning of 18 November the Claimant submitted an email to the Tribunal referring to what he considered to have been deficiencies in the quality of Interpreter B's interpretation. I considered this criticism to be wholly unwarranted and that the Claimant had unrealistic expectations of the ability of any interpreter to produce a verbatim interpretation of often lengthy questions and statements.

18. It was therefore necessary for the Tribunal administration to attempt to source an alternative Hungarian interpreter on 18 November 2025. Fortunately they were able to secure the services of Interpreter C and the Claimant did not raise any objection to the quality of his interpretation.

The Claimant's application to amend

19. In an email of 22 September 2025, the Claimant made an application to amend to include a claim that he had made a protected disclosure and suffered detriments, but primarily that his dismissal was for a reason or a principal reason that he had made a protected disclosure pursuant to s.103A of the ERA. He says that he raised various concerns that the Respondent, principally the Head Chef, had committed serious breaches of food safety regulations. This concerns were raised whilst he was subject to a disciplinary process.

The Respondent's position

20. In an email of 24 September 2025 Mr Joicey objected to the proposed amendment and referred to a very significant delay of nearly 12 months from the disciplinary procedure culminating in the Claimant's dismissal. The Respondent was concerned that if permitted the hearing would need to be postponed and there would be significant wasted costs and additional prejudice in the delay and lapse of memories of the Respondent's witnesses.

Relevant chronology to the amendment application

21. The Claimant was subject to a disciplinary process culminating in his dismissal on 8 October 2024. He issued a claim form on 14 February 2025. It is significant that in s.8.1 of that claim form he did not tick the box that he was making a whistleblowing claim including dismissal or any other unfair treatment after whistleblowing. Nor in s.8.2 is there any reference to anything which could

be construed as being a protected disclosure whistleblowing complaint and it is solely a claim for ordinary unfair dismissal.

The parties' submissions on the amendment application

The Claimant

22. The Claimant said that he lost his job because of whistleblowing and therefore wanted to add a claim of automatic unfair dismissal on that basis.

The Respondent

23. Mr Joicey said that if the application were granted it would mean that the hearing would need to be postponed and the Respondent would be required to serve an amended grounds of resistance, submit additional documents by way of disclosure and update the witness statements to reflect the expanded scope of the claim.

My decision

24. I refused the application. I gave consideration to well established principles enunciated in the leading case of Selkent Bus Co Limited v Moore [1996) IRLR 661, where the paramount considerations are the relevant injustice and hardship involved in refusing or granting an amendment. Further guidance was provided by the Court of Appeal in Abercrombie v Argo Range Master [2013) EWCA Civ 1148 where it was held that in cases which arguably raise new causes of action the correct approach is to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old. The greater the difference between the factual and legal issues raised by the amended claim to the existing the less likely it is that it will be permitted.

25. A factor to consider is not only the underlying merits of the claim, in terms of balancing the respective prejudice to the parties, but also the issue of time, in other words how far out of time are the additional claims if they were to be admitted.

26. I considered the extent to which the application to amend involved a new significant additional claim being added as opposed to the relabelling of an existing claim. I consider that this is a clear case of a new claim being added. Whilst some of the Claimant's contentions regarding breaches of health and safety regulations may have been referred to in the disciplinary proceedings that is far short of a claim that he had made a protected disclosure and been automatically unfairly dismissed as a result of such a disclosure.

27. It is very significant that the application to amend was only made 8 days in advance of a hearing which had been listed for a significant time and approximately eight months after the claim was issued. The Claimant has not explained why it was only at this late stage that the application to amend was made. He says it is to clarify and expand upon the basis of the claim,

28. The amendment being granted at such a late stage would self-evidently cause significant wasted cost and prejudice to the Respondent as the claim would have to be relisted with significant delay and with further preparation time for the Respondent. I do not consider that it is mere clarification and it would the addition of a significant new claim.

29. I do not consider that it would be consistent with the overriding objective or the balance of prejudice between the parties to grant an amendment at this stage and the application is refused.

The Claimant's applications on the morning of 17 November 2025

30. Whilst I gave oral reasons in respect of these applications those rulings are set out in this judgment.

31. The Claimant submitted various emails to the Tribunal up to and including the morning of 17 November 2025. I adjourned the hearing so that I could review that material and establish with the Claimant the applications he wished to make.

32. The Claimant confirmed that he was not making an application for my recusal on the grounds of bias or what he referred to as "the apparent impartiality of the presiding judge". However, the Claimant did want to revisit his application to amend his claim, in respect of which I had given an oral ruling refusing permission on 30 September 2025.

The Claimant's application to amend

33. In effect, the Claimant repeated the application I had refused on 30 September 2025. He expanded on his application to amend in an email sent to the Tribunal at 02:04 on 17 November 2025. This included the Claimant arguing that his amendment application was based on what he refers to as a "fresh detriment" which occurred on 29 September 2025. This detriment relates to the Claimant's contention that the Respondent had materially altered the content of various transcripts to his detriment. He further stated that he was prejudiced at the previous hearing because the then Hungarian interpreter did not adequately explain to him the oral reasons I had given for refusing the amendment application.

34. I gave the parties the opportunity to review the written version of the oral reasons which I gave refusing the amendment application on 30 September 2025 and which I had subsequently transcribed and which will be incorporated in the final written reasons for this case. The further application made by the Claimant is, in my view, a repeat of the original application to amend. Whilst he refers to an alleged detriment on 29 September 2025 that, of course, is predicated on his having made a claim within the requisite time period that he had made a protected disclosure and suffered detriments and/or automatically unfair dismissal causative link connected to such disclosure.

35. I informed the Claimant that his application would be treated as a request for a review of the decision I gave orally on 30 September 2025. Grounds for review would only arise where it would be just and equitable. I do not consider that there has been a material change in circumstances since the original application was made. In effect, the Claimant is repeating the same application, which was previously refused.
36. If the Claimant's application to amend were now accepted, it would mean that all of the evidence given so far would, in effect, have to be disregarded, as the case would be significantly expanded. That would be wholly inappropriate and very prejudicial to the Respondent.

37. I did not consider it appropriate to change my previous decision.

Application for leave to recall the Respondent's previous witnesses for further questions

38. The second application is for leave to ask additional questions of the Respondent's first two witnesses, Mr Booth and Mr Lemon. The Claimant says he wishes to ask additional questions because he gave up on questioning due to what he describes as deficiencies in the Hungarian interpreter.

39. My decision is that there is no basis whatsoever for recalling the witnesses. While I acknowledge the Claimant's concerns regarding the previous interpreter, I do not consider that he was precluded from putting questions to the Respondent's witnesses. Mr Joicey says, and I agree, that recalling the witnesses would require postponing today's hearing because those individuals are not available. The Respondent would therefore suffer significant additional cost and potential prejudice as a result of further delay. If the Claimant's application were to be accepted I consider there would be a very real risk that anyone using an interpreter could highlight issues regarding interpretation as a justification for what Mr Joicey describes as having "a second bite of the cherry" in recalling witnesses for further cross-examination.

40. The application is refused.

Issues pertaining to the bundle

41. Finally, the Claimant raised an issue regarding the bundle. It was unclear whether this was a formal application, and it appeared not to be. For the record, Mr Joicey strongly rebutted the Claimant's criticism of his professional conduct and stated that all of the documents referred to by the Claimant were incorporated in the bundle from page 385 onwards and which was provided to the Claimant on the afternoon of 29 September 2025.

Chronology of relevant events

42. The Claimant was employed as a Commis Chef by the Respondent between 9 May 2022 and 8 October 2024.

The Respondent

43. The Respondent provides contract catering and support services to a wide range of businesses and organisations. The Claimant was employed at the Respondent's contract with Bank of America (the Client). The contract with Bank of America is one of the Respondent's flagship contracts in Central London. It includes the entire provision of staff catering, hospitality and conference room and banqueting and vending services. The Respondent employs circa 85 employees, to include 12 managers, on services for its contract with Bank of America, one of its flagship contracts in Central London. It includes the entire provision of staff catering, hospitality and conference zoom and banqueting, vending services. The Respondent employs circa 85 colleagues including 12 managers for the Client.

The Respondent's disciplinary policy

44. The policy includes that employees may be given level one and level two recorded warnings. It provides that a level one recorded warning will remain live for 6 months.

45. The policy provides examples of conduct which may amount to gross misconduct to include serious breaches of health, safety and hygiene procedures including food safety.

Training

46. The Claimant, together with other employees in food preparation roles, undertook mandatory online induction training. The Claimant also completed several training courses and modules including heath and safety for caterers, food hygiene, cross contamination, food storage and knife safety in March 2024.

The Respondent's policy on cross-contamination

47. All employees are required to read this policy and sign that they have done so. The Claimant accepted that he had seen the policy. The policy provides:

> "Cross-contamination is the unintentional transfer of potentially harmful bacteria or other microorganisms, from raw or soiled foods to ready-to-eat foods. This can be direct, i.e. from one food directly to another, or indirect, where contamination happens via equipment, hands, services, close etc."

48. Further it provides:

- Control measures include separation between raw and ready-to-eat foods, contact services, storage containers and equipment.
- Raw foods must be stored separate from ready-to-eat foods at all times.
- Store raw foods at the bottom of refrigeration units to avoid direct contact with ready-to-eat foods.

- Keep ready-to-eat foods in appropriate covered containers or cover with food wrap.

The Claimant's level 1 recorded warning dated 26 March 2024

49. In February 2024 the Claimant was subject to an investigation following three large jars of unlabelled fermented cabbage being found in an unused, switched off fridge in breach of food safety procedures. The Claimant confirmed he had prepared the cabbage on site for his own consumption. Following a disciplinary process he was issued with a level 2 recorded warning. On appeal Mr Lemmon reduced to a level 1 recorded warning as set out in his letter to the Claimant dated 26 March 2024.

50. Mr Lemmon concluded that the Claimant had not followed the Respondent's HACCP procedures. He said that the Respondent's expectation of this wastage biproduct was that it should be disposed of and not turned into sauerkraut. He said that the jar should have had the correct food storage label.

51. Mr Lemmon decided that it was appropriate to issue a disciplinary sanction, but the initial level 2 warning should be reduced to level 1. The Claimant was advised that this would be disregarded after six months' satisfactory conduct. He was advised that any recurrence of this offence would result in further disciplinary action which could include dismissal.

17 September 2024 incident

52. On 17 September 2024 during a kitchen inspection Mr Wolfe noticed some potential serious food hygiene issues relating to the Claimant. He took pictures of the area of concern.

53. As a result of his concerns the Claimant was invited to attend an interview with Mr Wolfe on 18 September 2024. The disciplinary meeting notes include photographs of the fridge in question showing a packet of raw meat next to boxed hospitality sandwiches.

54. The Claimant explained that he had not processed raw meat in this kitchen before and that this was an exception because of a lack of space upstairs. He acknowledged that he had not asked Tom if he could undertake the preparation in his dedicated the raw preparation area but that he should have done. He said that he knew it was wrong to do this in the sandwich kitchen and that he thought it would be okay if he just washed down the services afterwards. He said that he had made an impulsive and momentary bad decision. He said that there was no excuse and that it should not have happened. He said that he just wanted to go on his break. He said that he is well trained. He described it as a momentary collapse of reasoning. He said he had made an obvious mistake and was embarrassed.

55. The Claimant then raised various criticisms of the working environment referring it to it as a "concentration camp".

56. He concluded the investigation and meeting by making allegations regarding other breaches of food hygiene procedures to include the use of a stick to pierce the labelled butter to improperly check the temperature of the refrigerators in order to deceive an official inspection and the repackaging of vacuum-packed food after the expiration date.

57. The Claimant attended a disciplinary meeting with Mr Lemmon on 2 October 2024. He said that the incident had been an absolute one off. He said that he had created a negligible health risk but acknowledged that he had acted contrary to the procedures. He again raised the concerns regarding the piercing of butter packs and provided photographic evidence purporting to show this. The Respondent does not accept that this necessarily shows the use of a stick rather than a proper measuring instrument.

58. The hearing was adjourned and resumed on 8 October 2024. The Claimant was advised that his employment was to be terminated for gross misconduct. He was told that he should have raised the issue regarding the alleged use of sticks to check temperatures in butter packs at an earlier stage.

Letter to the Claimant from Mr Lemmon dated 11 October 2024

59. The grounds for the Claimant's termination of employment for gross misconduct were set out. Mr Lemmon made reference to the Claimant having received a level 1 recorded warning for a serious breach of health, safety and hygiene procedures, including food safety earlier in the year. He believed that given the Claimant's history of previous and current violations there is a strong likelihood of future breaches.

The Claimant's appeal dated 17 October 2024

60. The Claimant contended that there had been an unfair and biased disciplinary procedure. He said that whilst he admitted breaching food safety that it was a one off and unusual situation. He made various references to various allegations of more general breaches of food safety and hygiene procedures within the Respondent's operation at the Client.

The Claimant's appeal on 1 November 2024

61. This was conducted by Mr Booth. The Claimant acknowledged that he had repeatedly breached the safety policy but referred to it as being a witch hunt. He said that double standards had been used against him. He said he did not represent a danger in the future as it would not happen again. He said that the punishment was disproportionate.

Mr Lemmon's email to Mr Booth on 6 November 2024

62. Mr Booth asked Mr Lemmon to investigate allegations raised by the Claimant in his appeal letter regarding safety and hygiene practices and specifically.

- Temperature probing
- Salad washing
- Watercress washing
- Vac-pac re-labelling
- Any others you may feel relevant

Mr Lemmon's investigation of the Claimant's allegations

63. As part of his investigation Mr Lemmon interviewed Matthew Webb, Health and Safety Manager (Mr Webb), Tom Warford, Sous Chef for Conference and Banqueting (Mr Warford) and Mr Wolfe. They all denied knowledge of a stick being used to pierce the labelled butter rather than carrying out appropriate temperature checks. The Claimant's other allegations regarding the failure to properly wash watercress and other food products were also denied. In relation to repackaging vacuum packed food Mr Webb said that best before date relates to a product's quality not whether it is safe to use. Protein items like chicken, beef, lamb and dairy would have to be discarded. Goods with a best before date like seasoning, nuts and dried grains, as long as left in the condition they were received in and not cooked, can be resealed after the best before date.

64. In a document dated 11 October 2024 Mr Lemmon set out his findings regarding the Claimant's allegations. He rejected all of the allegations which he said appeared to lack substance and he considered the evidence suggests that the Claimant may have acted with ulterior motives as the photos were taken on the day of his final disciplinary hearing.

Mr Booth's letter to the Claimant of 20 November 2024

65. Mr Booth rejected the Claimant's grounds of appeal. He said that the Claimant had not provided evidence to show that his allegations regarding other breaches of food safety and hygiene procedures were true.

The witness evidence

The Respondent's witnesses

66. It was very noticeable that the Claimant's focus in cross-examining the Respondent's witnesses was virtually entirely on his allegations of other breaches of food safety and hygiene procedures. He asked relatively few questions on the circumstances giving rise to his level 1 warning and his dismissal. It was also noticeable that his allegations were generic, and did not involve him seeking to compare his treatment with a named individual, where circumstances of misconduct were arguably comparable. As such many of his questions were difficult for the Respondent's witnesses to answer.

67. The Claimant asked repeated questions of the Respondent's witnesses regarding what he described as "discard dates". The Respondent's witnesses drew a clear distinction between use by and best before dates. Whilst use by dates are never compromised best before can be revised as there is no risk to food safety.

68. Mr Wolfe emphasised that the washing of ready to eat products, such as tomatoes, does not remove the possibility of cross contamination in the event of their being stored in proximity to raw meat. Further, he said that the fridge in which the Claimant had stored the raw meat also contained ready to eat sandwiches for client use on the top shelf. He said that the Claimant had incorrectly used a kitchen area not designed for raw meat preparation when its intended use was for the preparation of ready to eat sandwiches. He said that the Claimant had left the kitchen in a "disgusting" state and referred specifically to the unwashed scales. He said that this was completely unacceptable. He said that one of the other 12 chefs could have used the kitchen when it was left in this state and this could have caused the spread of contamination.

The Claimant

69. The Claimant disputed the circumstances of his level 1 warning. He says that the food was made for personal consumption and carefully separated from any storage area or work surface. He says that it was not stored in the kitchen area, was kept in an unplugged refrigerator, that a label was on the fridge saying, "not in use" and kept in unlabelled jars. The Claimant alleges that he was dismissed as a whistleblower. However, this is not a claim he included in the original claim form and for the reasons as set out I did not permit an amendment at the beginning of the hearing.

Submissions

Claimant

70. The Claimant provided a 2 page closing submission. He again referred to having made a protected disclosure notwithstanding his amendment application having been refused. He referred to unfairness in the reference made to the level 1 disciplinary warning dated 26 March 2024 as he said that process had never been concluded as the outcome letter did not provide him with the right to raise a formal grievance. He referred to various alleged breaches of the ACAS Code. He said that the incident on 17 September 2024 was a single, isolated error, not repeated or intentional misconduct.

Respondent

71. Mr Joicey said that the breaches for which the Claimant was responsible of food safety and hygiene standards could result in very significant consequences for the Respondent to include the potential loss of its flagship contract with Bank of America.

72. He further says:

- the claimant had 14 years' experience as a chef and had been fully trained on food hygiene and cross contamination risks;
- a reasonable investigation was undertaken;

- that Mr Lemmon, who conducted the disciplinary hearing, was independent of the previous investigation;

- that the allegations made by the Claimant regarding other breaches of food safety and hygiene regulations were unparticularised with no dates or names being provided;

- that there was no further investigation which could have been undertaken into the allegations raised by the Claimant;

- that it is significant that the Claimant only made these allegations when he was subject to a disciplinary investigation;

- that it was a case of the Claimant knowingly and deliberately choosing not to follow critical food hygiene procedures;

- that given the Claimant's previous level 1 warning he was aware of the standards expected;

- that the Claimant demonstrated a pattern of behaviour in disregarding food safety and hygiene regulations;

- an additional concern was the Claimant's demeanour, laughing or smirking, when Mr Wolfe raised the concerns with him;

- the Claimant's repeated refusal to accept the seriousness of the situation; and

- a concern that there was no guarantee that a similar issues may not arise in the future.

73. He says that the Respondent had reasonable grounds for suspicion of gross misconduct, had conducted a reasonable investigation and that the decision to dismiss was within the band of reasonable responses.

The Law

74. Under section 98(1)(a) of the ERA it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal. Under section 98(1)(b) the employer must show that the reason falls within subsection (2) or is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. A reason may come within section 98(2)(b) if it relates to the conduct of the employee. At this stage, the burden in showing the reason is on the Respondent.

75. Under s98(4) the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of

the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

76. In considering whether or not the employer has made out a reason related to conduct, in the case of alleged misconduct, the Tribunal must have regard to the test in British Home Stores v Burchell [1980] ICR 303, and in particular the employer must show that the employer believed that the employee was guilty of the conduct. This goes to the Respondent's reason. Further, the Tribunal must assess (the burden here being neutral) whether the Respondent had reasonable grounds on which to sustain that belief, and whether at the stage when the Respondent formed that belief on those grounds it had carried out as much investigation into the matter as was reasonable in all the circumstances. This goes to the question of the reasonableness of the dismissal as confirmed by the EAT in Sheffield Health and Social Care NHS Foundation Trust v Crabtree EAT/0331/09.

77. In considering the fairness of the dismissal, the Tribunal must have regard to Iceland Frozen Foods v Jones [1982] IRLR 439 and have in mind the approach summarised in that case. The starting point should be the wording of section 98(4) of the ERA. Applying that section, the Tribunal must consider the reasonableness of the employer's conduct, not simply whether the Tribunal considers the dismissal to be fair. The burden is neutral. In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another view. The function of the Tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within that band, the dismissal is fair. If the dismissal falls outside that band, it is unfair.

78. The band of reasonable responses test applies to the investigation. If the investigation was one that was open to a reasonable employer acting reasonably, that will suffice (Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23.)

79. In reaching their decision, Tribunals must also take into account the ACAS Code on Disciplinary and Grievance Procedures. By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the Tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

80. The ACAS Code includes:

- *Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*

- *Employers and employees should act consistently.*
- *Employers should carry out any necessary investigations, to establish the facts of the case.*
- *Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*
- *Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.*
- *Employers should allow an employee to appeal against any formal decision made.*

5*. It is important to carry out necessary investigations of potential disciplinary includes matters without unreasonable delay to establish the facts of the case. In some cases, this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.*

6. *In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.*

9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

11. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case

Conclusion and Discussion

81. I now apply the law to the facts to determine the issues.

82. The first issue is whether the Respondent has shown the reason why the Claimant was dismissed. I find that they have. The Claimant was dismissed for gross misconduct.

83. I now have to decide whether it was fair for the Respondent to dismiss the Claimant for that reason which includes considering whether they followed a fair procedure. I have to apply the band of reasonable responses.

84. First, I will go through the three stages in the case of BHS v Burchell.

85. Stage 1: did the Respondent genuinely believe the Claimant was guilty of this misconduct? I find that they did. I consider it to be a significant that at the contemporaneous investigation meeting and disciplinary hearings the Claimant made various acknowledgements that he had made mistakes, that there was no excuse and that he was embarrassed by such lapses. During the Tribunal

hearing the Claimant appeared, at least in part, to retract from these admissions and to seek to argue that the various matters which formed the subject matter of the disciplinary investigation and his dismissal were not in fact breaches, or at least significant, breaches of food safety procedures. For example, he sought to argue that the presence of raw meat above tomatoes and parsley in a fridge was not an issue as these items would be washed. However, that is inconsistent with his previous concessions. Further, I accept the Respondent's evidence that even with washing there would be a risk of food contamination. I accept the Respondent's evidence that a real risk existed and that this was not a minor or technical breach but a matter of serious concern.

86. Stage 2: did the Respondent hold that belief on reasonable grounds? This issue is interrelated with the extent to which the Respondent undertook a reasonable investigation. I find that the Respondent had reasonable grounds for its belief in the Claimant's misconduct. The Claimant had in effect admitted his errors. Further, I consider that it was a reasonable for the Respondent to take account of the fact that within the previous 6 months the Claimant had received a level 1 disciplinary warning as result of a failure to follow the HACCP procedures. I therefore consider that it was reasonable for the Respondent to conclude that there was a pattern of conduct and a risk that the Claimant may make further breaches.

87. Stage 3: did the Respondent carry out a reasonable investigation? I consider that the Respondent carried out a reasonable investigation. Mr Wolfe adopted a thorough approach. When the Claimant made allegations of other unrelated breaches of food safety and hygiene procedures Mr Lemon investigated and carried out interviews with relevant employees, in respect of alleged temperature probing, salad washing, watercress washing, vac-pack re-labelling and other relevant matters. I consider that there were no obvious deficiencies in the investigation undertaken. It is also, in my opinion, significant that the Claimant made these allegations when he was subject to a disciplinary investigation which he must have reasonably concluded could result in his dismissal. Further, the allegations made by the Claimant lacked specificity. This is not a case where the Claimant can reasonably contend that his dismissal was unfair in that he was treated inconsistently with other employees who had committed similar offences given that he identified no such individuals.

88. Therefore I conclude that the Respondent genuinely believed that the Claimant was guilty of misconduct, that that belief was held on reasonable grounds and that the Respondent had carried out a reasonable investigation.

Range of reasonable responses

89. I consider that the decision to dismiss the Claimant for gross misconduct was within the range of reasonable responses open to the Respondent. Any decision to the contrary would in effect involve the Tribunal's substitution of its view for that of the respondent. Whilst the Claimant contended that the decision to dismiss was disproportionate I do not accept this. He acknowledged culpability during the investigation and disciplinary process. Further even if it were to be accepted, and the evidence does not justify such a finding, that there were other

breaches by other employees of food safety and hygiene procedures within the kitchens, this would not provide justification for the Claimant's conduct and undermine the Respondent's decision that dismissal was an appropriate sanction. Whilst the Claimant would appear to genuinely consider the decision to dismiss as disproportionate it is not outside the range of reasonable responses open to the Respondent.

Procedural fairness and the ACAS Code

90. I consider that the overall procedure followed was fair and in compliance with the Code. The investigation and disciplinary process was conducted in a reasonable timescale. The Claimant was given the opportunity to be accompanied at the disciplinary meetings but declined this offer. The Claimant was aware, given the opportunity to respond, to the specific allegations. He had the opportunity to appeal. Whilst he says that he did not receive the appeal outcome letter it would have been open to him to have chased this given that he was aware that Mr Booth was considering matters and had advised him that his outcome would be sent to him.

91. I reject the Claimant's contention that the initial disciplinary procedure which culminated in him receiving a level 1 warning on 26 March 2024 was legally flawed as he was not given the opportunity to raise a grievance. There is no requirement under the ACAS Code, or otherwise, to advise an employee who is subject to a disciplinary process, that they can then invoke a grievance procedure. The Claimant had been given the opportunity to appeal the initial decision to impose a level 2 recorded warning. Further, some of the Claimant's contentions regarding breaches of the ACAS Code do not make sense, for example, that the level 2 warning was reduced to a level 1 without justification.

Overall final conclusions

92. Ultimately this was solely a claim for ordinary unfair dismissal. However, it was very apparent throughout the hearing that the Claimant was reluctant to accept my refusal of his application to amend the claim to include protected disclosure and causatively connected detriments and dismissal. Therefore, much of his cross-examination of the Respondent's witnesses focused on issues which were not directly relevant to his dismissal.

93. The claim for ordinary unfair dismissal pursuant to section 98 (4) of the Employment Rights Act 1996 (the ERA) fails and is dismissed.

Employment Judge Nicolle

Dated: **1 December 2025**

Sent to the parties on:
4 December 2025
.....
For the Tribunal Office