



EMPLOYMENT TRIBUNALS

Claimant: Alexander Milne

Respondent: Golf Leisure Limited

Heard at: East London Hearing Centre

On: 30 May 2025

Before: Employment Judge Searley

Representation

For the Claimant: Unrepresented

For the Respondent: Unrepresented

REASONS

Introduction

1. Mr Milne (the claimant) was employed by Golf Leisure Limited (the respondent) as an assistant PGA professional at Crondon Park Golf Club. His employment began on 24th of October 2022. On 25 January 2022 he was dismissed from that employment. He was not required to work during his notice period. His contract ended on 25th of February 2024.
2. Pursuant to an ET1 dated 22nd July 2024, the claimant brings a claim of unfair dismissal against the respondent. At the outset of the hearing and with the parties consent I removed Mr Marlon Fox as a respondent to the claim.
3. The claimant's case is that he was dismissed in retaliation for raising concerns about whether he would be paid the national minimum wage. The respondent denies this. The respondent's case is that it was entitled to dismiss the claimant without cause, given that he had less than two years' service, but that he was, as a matter of fact dismissed due to his performance and attitude whilst in the role.
4. The correct terminology, given the claimant's age, is the national living wage. For the purposes of this judgment, and to reflect the terminology used in the evidence, I use the term national minimum wage.

Issues

5. The issue between the parties is what was the reason or the principal reason for the claimant's dismissal.
6. The issues I must decide are as follows:
 - a. Did the claimant take an action with a view to securing the benefit of the right to national minimum wage; and
 - b. If so, was that the reason or the principal reason for his dismissal.
7. If he did take such an action, and that was the reason or principal reason for his dismissal then he was unfairly dismissed.

The Evidence

8. I have read and considered the documents in the bundle provided to me for the hearing. I read the witness statements of the claimant, and Laura Bacchus Milne (the claimant's wife), both provided on behalf of the claimant and those of Marlon Fox (the Managing Director of Golf Leisure Limited), and David Llafar (the Director of Golf and the claimant's day to day manager) both provided on behalf of the respondent. I heard oral evidence from the claimant Mr Fox and Mr Llafar.
9. Whilst I read and considered all of the evidence to which I was directed, I have only set out the facts I consider relevant to the issues I need to decide. Where I have had to resolve any conflict of evidence, I will explain how I have done so. References to page numbers are to the agreed bundle of documents.

Facts

10. The claimant's employment began on 24th October 2022. His contract required him to work 40 hours per week in return for a salary of £20,000 per annum. (page C63). That salary amounts to £9.62 per hour. From 1 April 2023, the national minimum wage for which the claimant was eligible was £10.42 per hour.
11. There was also a Commission structure in place which allowed the claimant to earn commissions, over and above his basic salary, in line with the agreed structure. That structure varied during the claimant's employment.
12. The contract the claimant signed was silent on how any shortfall in relation to the national minimum wage would be resolved if commission payments were insufficient to cover the difference between the claimant's salary and the national minimum wage (page C63).

13. It is agreed between the parties that between the 24 October 2022 and February 2023, the claimant was underpaid (page B58). The claimant says he raised this at the time in a brief conversation with Mr Llafar. Whilst the claimant and Mr Llafar gave slightly different accounts of what was said, a brief general conversation did happen between the claimant and Mr Llafar about the fact that the claimant was being underpaid, and the claimant was told that a new commission structure would rectify this. The claimant accepts there was no suggestion in that conversation that he would not be paid the national minimum wage.
14. The claimant did not take the underpayment issue further because he was new in the role, and he accepted Mr Llafar's explanation that the matter would be rectified by the new commission structure.
15. In February 2023 a commission structure was introduced, and from that point onwards the commission earned always took the claimant's salary above the national minimum wage.
16. During these proceedings the respondent made a payment of £223.31 to the claimant in relation to this historical underpayment. (B59). Mr. Fox accepted in evidence that it was as a result of the claimant highlighting this issue in his ET1 that prompted the respondent to look at the position. I find that the respondent would not have identified the issue without the claimant raising it. This is supported by the fact that the respondent only remedied the matter when it was brought to their attention again during these proceedings. I find that this underpayment arose because of a clerical error. There is no evidence to suggest otherwise. I therefore do not consider that this underpayment demonstrates there was a policy or propensity on behalf of the respondent to seek to avoid payment of the national minimum wage.
17. The underpayment is relevant because it is context within with the claimant raised a subsequent concern to Mr Llafar, in January 2024, about payment of the national minimum wage. I accept that the fact the claimant had been previously underpaid created an uncertainty in his own mind that it might be possible for him to be underpaid again in the future, particularly because there was nothing in his contract about the issue.
18. However, given the brevity of the conversation the claimant had with Mr Llafar about this issue and the fact that the claimant accepted Mr Llafar's explanation that the commission structure would rectify the issue, I do not consider that uncertainty in the claimant's mind was something that Mr Llafar would have been aware of when the issue of the national minimum wage was raised again between the parties in January 2024.

19. In summary, Mr Llafar's evidence was that he had to raise performance issues regularly with the claimant, on an informal basis. Mr Fox also gave evidence to this effect. The claimant denies any conversations about his performance took place. The evidence provided to me on this issue by the respondent's witnesses was generic in nature and lacked any specific examples. There are no notes of any such conversations. I do not accept that any form of performance conversation took place with the claimant in which specific concerns about his performance were meaningfully explained to him. This is consistent with the fact that there are no documents supporting the suggestion that performance concerns were raised.
20. I find that conversations did take place between the claimant and Mr Fox and Mr Llafar about the direction of the business, during which the claimant expressed his opinions about those matters. It is clear from the email of 17 December (B5) that the claimant did seek to raise issues about how the business was run. I also find that those conversations irritated both Mr Fox and Mr Llafar and that both considered the claimant was overopinionated, negative and was a poor listener. That is the consistent thread that runs between their witness statements and the evidence provided to me.
21. It is in that context that I have considered the events which led to the claimant's dismissal.
22. In November 2023, Mr Llafar told the claimant and his colleague (Mr Bradford) that the commission structure was likely to change in 2024.
23. A meeting was held between Mr Bradford, the claimant and Mr Llafar on Thursday 14 December 2023 to discuss the new commission structure. The new commission structure was based on selling golf club memberships. It therefore removed commission for green fees, society use of the course, use of the driving range and pro-shop sales which were in the 2023 commission structure. It also limited the types of membership for which commission could be earned.
24. The new structure created a concern for the claimant that he would need to sell more memberships than he considered possible, and he was concerned that might mean he would earn less than the minimum wage. The claimant discussed his concern with this wife. For the reasons given above, I accept that that the fact the claimant had been previously underpaid was preying on his mind and informed his concern about the situation.
25. The claimant and Mr Bradford discussed the issue between them, and both were concerned about the change in the commission structure. This is supported by an email dated 17 December 2023 from Mr Bradford to Mr Llafar and the claimant stating that the claimant and Mr Bradford had discussed the new commission structure and wanted to have a more formal meeting in the new year. I note that this email wasn't included in the original bundle due to a photocopying error but was provided to me during the hearing.

26. Mr Llafar responded to that email within the hour. He explained that the meeting on 14 December had been a “courtesy conversation” to allow Mr Llafar to get some feedback from Mr Bradford and the claimant before finalising the commission structure with management. He did not offer a further meeting.
27. Mr Llafar’s response was a dismissive response which made clear that the commission structure was not something he intended to discuss further with Mr Bradford or the claimant. The fact Mr Llafar was not willing to offer a further meeting with Mr Bradford and the claimant tends to suggest that he, and in turn management, were not genuinely seeking the feedback of the claimant and Mr Bradford on the structure. This is consistent with the view taken by Mr Llafar and Mr Fox that they found the claimant to be overopinionated and overly negative. Had Mr Llafar and management genuinely been interested in obtaining feedback there was no reason not to offer a further meeting.
28. The claimant then responded to Mr Llafar, around an hour later. He set out a series of concerns about the Commission structure. The concerns related to the fact that, in the claimant’s opinion, there was not enough capacity on the course to accommodate more 7-day memberships, in particular given the lack of weekend capacity. He said certain members were dependent on return and cancellations due to poor weather. He stated that he felt these issues were restricting him and Mr Bradford from selling memberships. He asked again for a meeting in the new year. There is no evidence of a reply to that email.
29. The email did not raise a specific concern in relation to the national minimum wage or the whether the new commission structure put the claimant at risk of falling below the minimum wage. Its focus was on providing the claimant’s concerns to Mr Llafar about the proposed new commission structure based on the claimant’s opinion about the difficulties that existed in relation to selling memberships. I find the absence of a reply from Mr Llafar consistent with Mr Llafar’s earlier email that the commission structure was not a matter for further discussion. No further meeting was offered or held. This is again consistent with the position that the respondent was not interested in hearing the claimant’s opinion on these issues.
30. Mr Fox was made aware, by Mr Llafar, about discussions that were taking place about the commission structure. Mr Fox’s evidence was that, in late Q3 2023 he had made his own decision that the claimant could not continue in the business, but that Mr Llafar had been more supportive of the claimant continuing. By December 2023, Mr Fox took the view that he did not like the way the claimant conducted himself, and that he did not consider the claimant to be a good fit for the business.

31. On 21 December Mr Llafar emailed the claimant. His email thanked the claimant for his efforts in 2023 and described it as a positive year for the golf division. Contrary to Mr Llafar's evidence that he had sent the email to the whole team and wasn't directing that appreciation and praise to the claimant, I find the claimant would have understood that praise to be directed at him. The email was plainly addressed to him personally. This is consistent with my earlier finding that the claimant's performance was not an issue that was raised with the claimant during his employment.
32. The email set out the new commission structure and made clear that each member of staff would only receive commissions on the memberships sold individually. The letter set out a series of monthly targets for the team and for each individual, which were weighted by looking at the last 2 years' data. The claimant was allocated 50% of the team's target.
33. Mr Llafar's evidence, which I accept, is that the target was capable of being achieved and indeed has been achieved by his remaining staff. Notwithstanding that, I find that in the claimant's mind:
 - a. he clearly perceived the target to be a challenging one (for the reasons set out in his email to Mr Llafar);
 - b. his efforts to discuss those reasons with Mr Llafar had been rebuffed (as shown by Mr Llafar's failure to respond to the email);
 - c. the structure was to be imposed on him, (as it was on 21 December); and
 - d. there had been a period when he had been underpaid by the respondent which had been resolved by the 2023 commission structure, a structure which was now being replaced.
34. Accordingly, I find that the claimant held a genuine belief that there was a risk that he would not earn the minimum wage if he could not make the required sales, and there was a risk that the respondent might not make up the shortfall.
35. The golf course was closed between 1 and 5 January. It was open on 6 January but closed again on 7 and 8 January. I find this exacerbated the claimant's concerns about his income because of the impact the closure on his ability to earn commission.
36. It is agreed between the parties that on 12 January a conversation was held between Mr Llafar and the claimant. The parties dispute what was said in that conversation.
37. On 12 January 2024 the claimant sent his wife a message at 4.21pm saying that he had had a conversation with Mr Llafar. The claimant told his wife that Mr Llafar's response to the claimant was to tell the claimant to sell more memberships. The claimant wrote "he doesn't get my view on our basic unfortunately".

38. There was then a series of further messages in which the claimant told his wife that he had worked out that he would need to sell 14 memberships at £125 commission to reach minimum wage, and that once the rate of minimum wage increased (as it was due to do in April) then he would need to sell 30 memberships. The claimant then described the conversation with Mr Llafar, noting that Mr Llafar had asked the claimant what steps he had taken to sell memberships, and had described some steps taken by Mr Bradford, which the claimant thought Mr Llafar had found impressive. The claimant stated in his last message the following:

"When I said we won't be on minimum wage until we've sold either 14 before April or 30 by May and his response was "if you've only sold 30 memberships by the summer then you won't still have a job".

39. I find these messages support to the claimant's account that he was told in his conversation with Mr Llafar words to the effect of if he did not sell sufficient memberships by the summer, he would lose his job. The text message was sent the same day as the meeting. Accordingly, I accept the claimant's account of what was said to him in that meeting. The claimant himself accepts that at no stage during that meeting was he told he would not be paid the minimum wage.

40. I therefore find that in the meeting between Mr Llafar and the claimant the claimant was threatened with dismissal. However, I find that the threat from Mr Llafar was in relation to the claimant's need to sell memberships rather than a threat that the claimant would be dismissed for having raised his concern about the national minimum wage.

41. I accept that following the conversation the claimant believed that the respondent had no intention of making his basic salary the national minimum wage. I find the claimant's reference in his message to his wife that Mr Llafar did not "get my view on our basic" to be consistent with the fact that the claimant believed that the respondent did not consider that they were obliged to make the claimant's base salary at least the minimum wage.

42. I note that the respondent was under no such obligation. It is permissible to use commission to top up minimum wage. The obligation on the employer is that where commission in any payment period is insufficient to allow an employee to be paid minimum wage the employer must make up the shortfall between their basic salary and the national minimum wage.

43. After the meeting on 12 January, Mr Fox was made aware that discussions had taken place between Mr Llafar and the claimant about the commission structure. Mr Fox does not recall whether Mr Llafar raised the issue of the minimum wage. I find that, given Mr Fox's existing view that the claimant was not the right fit for the business, being told about the claimant's complaints about the impact of the commission structure, would have further cemented that view in Mr Fox's mind.

44. On 22 January the claimant sought legal advice. I have not read the provided transcript given it contains legal advice given to the claimant. However, I accept it shows that the claimant was sufficiently concerned about the commission structure and its potential impact on his ability to earn minimum wage that he sought further advice about it.
45. At some point after the conversation of 12 January, Mr Llafar became aware that the claimant was seeking opportunities for employment with another employer. This was through a contact that Mr Llafar had given to the claimant for the purposes of his role at the respondent. Mr Llafar became aware that the claimant had asked that contact for employment and was openly criticising the respondent. I accept that caused Mr Llafar and Mr Fox embarrassment.
46. I accept Mr Llafar's evidence that he became aware of this prior to the claimant's dismissal. I also accept that, by seeking alternative employment, the claimant took a step which confirmed in Mr Llafar's mind that the claimant did not support the direction of the business and did not have the right attitude to continue working for the respondent.
47. Whilst it may have been perfectly reasonable for the claimant to have taken a view he needed to find an alternative employer, I find that was the point at which Mr Llafar could no longer continue to support the claimant's employment with the respondent because:
 - a. he already had concerns about the claimant's attitude and approach;
 - b. he knew the claimant was dissatisfied with the proposed commission structure and had alternative views about what the claimant considered to be a fairer approach;
 - c. The claimant had directly approached a third party to whom Mr Llafar had introduced him to seek alternative employment; and
 - d. The claimant had criticised the respondent's approach to that third party.
48. There is an inconsistency in the evidence as to whether a meeting took place between the claimant, Mr Llafar and Mr Fox on 24 or 25 January. The date does not particularly matter, as the parties agree that such a meeting took place and that those parties were in attendance.
49. There are three accounts of what happened at that meeting and the reason the claimant was given in that meeting for his dismissal.
50. Having considered the competing accounts, I find that the reason given to the claimant in that meeting was the reason given by Mr Llafar, namely the claimant's his attitude and his criticism of the direction of the business externally, because this reason is consistent with the view I have found was reached by Mr Llafar once he heard that the claimant had been seeking other employment.

51. On 25 January 2024, Mr Llafar wrote to the claimant confirming his dismissal. No reason is given for his dismissal in that letter. The final sentence of the letter states that the respondent sincerely appreciated the contributions that the claimant had made during his time with the business.
52. During the evidence Mr Llafar stated that the decision to dismiss the claimant had been taken prior to Christmas, but a decision had been taken to delay informing the claimant until the new year. I do not accept that. If such a decision had been taken there was no reason for the respondent to have waited so late into the new year (24 January 2024) to communicate that decision to the claimant.
53. At C80 of the bundle I was directed to a reference Mr Llafar wrote on behalf of the claimant. I note that it simply states that the claimant consistently demonstrated "punctuality, reliability and a willingness to learn". I do not find the writing of this reference supports the claimant's assertion that a reference would not have been written if there were issues in relation to the claimant's performance in the role. I note letter is silent as to any other aspects of how the claimant performed the role, including his attitude.
54. On 31 January the respondent advertised the claimant's role. I do not find this takes matters further, because as set out above, I have found that the reason given to the claimant for his dismissal did not relate to cost cutting. Accordingly, there was no reason for the respondent not to advertise the claimant's role, having dismissed him and it does not indicate that the claimant was misled in the meeting at which he was dismissed.

Law

55. Section 104A of the Employment Rights Act 1996 provides as follows:

"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a)any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies;

[...]

(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—

(a)whether or not the employee has the right, or

(b)whether or not the right has been infringed,

but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this section applies—

(a)any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an employment tribunal; and

(b)any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration)."

56. If the reason for the dismissal is the reason set out in s.104A, then the tribunal must find the dismissal unfair. If there are multiple reasons for dismissal, the tribunal must be satisfied that the prohibited reason is the principal reason for dismissal: a claim for automatically unfair dismissal will not succeed if the prohibited reason is merely a subsidiary or indirect reason for dismissal.
57. There is no minimum qualifying period of employment applicable to this right (section 108). However, where the employee lacks the requisite continuous service to claim ordinary unfair dismissal, he or she will acquire the burden of proving, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason. Once an employee has presented some *prima facie* evidence that he or she was dismissed for the prohibited reason, it is up to the employer to produce evidence to the contrary. (see *Smith v Hayle Town Council 1978 ICR 996, CA*).

Analysis and conclusions

58. The issues I must decide are as follows:
 - a. Did the claimant take an action with a view to securing the benefit of the right to national minimum wage; and
 - b. If so, was that the reason or the principal reason for his dismissal.
59. I find that the claimant did take an action with a view to securing the benefit of the right to national minimum wage. On the facts, I have found that the claimant held a genuine belief that there was a risk that he would not earn the minimum wage if he could not make the required sales, and there was a risk that the respondent might not make up the shortfall. I have also found that he raised his concern that he may be paid less than the minimum wage if he could not make the commission sales to Mr Llafar. I therefore find that he took an action with a view to securing the benefit of the right to national minimum wage.
60. I do not however find that the claimant's raising of his concern that he might not be paid the minimum wage was the reason or principal reason for his dismissal. I find that the principal reason for the claimant's dismissal was that given by Mr Llafar in the meeting – namely his attitude and his criticism of the direction of the business externally.

61. As have found that both Mr Llafar and Mr Fox had formed the view that the claimant was overopinionated about how to run the business, had a negative approach, and was a poor listener. Mr Fox had already formed a view by the end of Q3 that the claimant was not an appropriate fit for his business, but had deferred to Mr Llafar's view that the claimant should be given more time.
62. I have therefore considered what changed between the end of Q3 and 25 January 2024. There are two matters. The first was the conversation between the claimant and Mr Llafar on 12 January, and the second was Mr Llafar becoming aware that the claimant had been seeking employment with another company which Mr Llafar had introduced the claimant to and criticising the respondent to that other company.
63. For the reasons I have given, whilst I find that Mr Llafar did threaten the claimant with dismissal after the meeting on 12 January, he did not make a threat that the claimant would be dismissed for having raised his concern about the national minimum wage. Rather the threat related to the claimant's need to perform to Mr Llafar's satisfaction in selling memberships.
64. Thereafter, Mr Llafar became aware of another example of an issue with the claimant's attitude, namely the seeking of employment from a third party and the criticising of the respondent's business to that third party. It was at that point, and for that reason, that Mr Llafar took the decision that the claimant did not have the right attitude to continue working for the respondent. I find that this was the principal reason for the claimant's dismissal.
65. Accordingly, whilst I find that the claimant's raising of his concerns about the national minimum wage were part of the picture, I do not find that they were the reason or the principal reason for his dismissal. Therefore, the claimant's claim is not well founded, and the claim is dismissed.

Approved by
Employment Judge E Searley
Date: 07 July 2025