



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001571/2025

Held in Aberdeen on 15-17, 20-21, 30 April & 1 May 2026

Employment Judge Sangster

Mr R Joseph

**Claimant
In Person**

PizzaExpress Limited

**Respondent
Represented by
Ms E Moncur
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

- The claimant's complaint of harassment related to race succeeds. The respondent is ordered to pay the claimant the sum of **£5,469.04**, including interest, by way of compensation for injury to feelings.
- The claimant's remaining complaints, of victimisation, detriments as a result of making protected disclosures, and automatically unfair dismissal as a result of making protected disclosures do not succeed and are dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as a waiter. In a claim presented on 21 June 2025, he brought complaints of:
 - 1.1. Harassment related to race;
 - 1.2. Detriment as a result of making protected disclosures;
 - 1.3. Automatically unfair dismissal as a result of making protected disclosure;
and
 - 1.4. Victimisation.

2. A preliminary hearing for case management was held on 25 September 2025. A list of issues was prepared by the Tribunal, following discussion at that hearing. That list of issues was appended to the note issued following the preliminary hearing. Parties were informed that they should consider this list carefully to make sure that it accurately recorded the full extent of the issues to be determined. They were advised to inform the Tribunal, and the other party, within 14 days of the date the note being sent, if it did not.
3. The claimant made extensive changes to the proposed list of issues, in particular, to add details of the oral statements which he relied on as protected disclosures, clarifying the protected acts relied upon, adding 4 asserted detriments and clarifying the detriments which he asserted were also acts of victimisation. The respondent agreed to the addition of those points, objecting only to the addition of some superfluous wording. The list of issues was then finalised.
4. In advance of the final hearing, the respondent conceded that 13 of the 24 asserted disclosures were protected disclosures, that the acts relied upon in the victimisation complaint were protected acts. They also conceded the complaint of harassment related to race. The concessions made by the respondent are shown in bold italics in the list of issues contained in the schedule to this judgment.
5. Parties also lodged a list of agreed facts, in advance of the final hearing.

Witnesses & Other Individuals

6. The claimant gave evidence on his own behalf. He did not call any further witnesses. The respondent led evidence from the following individuals employed by them, in the following order:
 - 6.1. Stephanie Hunter (**SH**), General Manager, Stirling;
 - 6.2. Jacqueline Beveridge (**JB**), General Manager, Braehead;
 - 6.3. Jason Duncan (**JD**), Chef at Union Square, Aberdeen;
 - 6.4. Lewis Draper (**LD**), General Manager, Beverley; and
 - 6.5. Bethany McFarlane (**BM**), General Manager, Union Square, Aberdeen.
7. Other individuals referenced in this judgment are:
 - 7.1. Evan Baranowski (**EB**), Shift Manager, Union Square, Aberdeen;
 - 7.2. Lauren Greig (**LG**), Chef at Union Square, Aberdeen;

- 7.3. Sam Mitchell (**SM**), Deputy General Manager at Union Square, Aberdeen; and
- 7.4. Michael Tortolano (**MT**), Waiter at Union Square, Aberdeen.

List of Issues

8. The list of issues was further discussed at the start of the hearing. It was agreed that the list of issues reflected the issues to be determined at the hearing.
9. Towards the end of the morning on the first day of the hearing, during the claimant's evidence, it became apparent that the claimant was also asserting that a letter of concern issued to him on 13 March 2025 was a detriment as a result of making a protected disclosure and/or an act of victimisation. He was also asserting that concerns raised by him on 26 February 2025 also constituted a protected act (not just a protected disclosure as reflected in the list of issues). Parties were each afforded the opportunity to make submissions in relation to this, and it was ultimately determined, for reasons stated orally at that time, that the list of issues should be further amended to reflect these points.
10. The final list of issues, incorporating these additional points (at section 3.1.9, 5.1 and 5.2.1) is contained in the schedule to this judgment. As indicated above, the points conceded by the respondent are shown in bold italics.

Other Issues Arising During Hearing

11. At 17:18 on Friday 17 April 2026, after 3 days of evidence, the claimant sent an email to the Tribunal (only) stating: *'Today during the conclusion of day 3 of my hearing, I witnessed what appeared to be Judge Sangster winking at the Respondent's solicitor Erin Moncur. I can't say for certain that it was intentional and do not want to jump to conclusions, but It did seem to be intentional. I don't believe asking for recusal at this late stage in the hearing would be in the interest of either party, but I would respectfully ask the Tribunal and Judge Sangster to reassure me that there are no conflicts of interest between judge Sangster and Erin Moncur and that my case is being handled impartially.'* That email was passed to me on 20 April 2026. The claimant was assured, on 20 April 2026, that this was not the case: I had not winked at Ms Moncur. I further assured him that, whilst Ms Moncur may have appeared as a representative in other cases, I have not met her other than in that context, and there was certainly no conflict of interest: had there been, I would not have started the hearing. He was informed of the procedure for making a complaint, if he wished to do so. The claimant indicated that he accepted the assurances provided, and stated that he may have been mistaken. He indicated that he had no concerns with the conduct of the case otherwise.

Findings in Fact

12. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider to decide if the complaints made succeed or fail. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues. The relevant facts, which the Tribunal found to be admitted or proven, are set out below
13. The respondent operates a chain of restaurants, including 2 in Aberdeen: one at Union Street and one in Union Square.
14. The claimant commenced employment with the respondent, as a waiter, on 23 September 2024. He worked at the respondent's Union Square restaurant (**the Restaurant**). He generally worked 20-22 hours per week. He received £12.21 per hour, plus 58% of tips. His contract of employment, at clause 14, stated *'You shall not use or disclose to any person either during or at any time after your employment with the Company any confidential information. For the purposes of this clause, confidential information means any information or matter about the business or affairs of the Company [or any of its business contacts] or about any other matters which may come to your knowledge in the course of your employment, and which is not in the public domain, or which is in the public domain as a result of your breach of this agreement. This restriction does not apply to: any use or disclosure of confidential information that has been authorised by the Company, is required by law or is carried out in the proper course of your duties; or any protected disclosure within the meaning of section 43A of the Employment Rights Act 1996.'*
15. BM was the General Manager of the Restaurant, having been promoted into that role around the time the claimant's employment with the respondent started. SM was the Deputy General Manager.
16. From early in his employment, the claimant felt that one of the shift managers, EB, did not like him and that EB would limit interactions with him, but not other colleagues, and single him out for criticism. On 14 December 2024, the claimant sent 3 WhatsApp messages to BM between 13:04 and 13:17. The first and last related to opting out of the pension scheme. In the second, he stated *'Also, mind just telling Evan to chill out a bit on the authoritarianism. He lectured me last night because I was 1 minute late. Gave me a bad vibe before the shift even started.. Maybe just help him understand how to use managerial discretion a bit better. Im far from perfect, but I always give 100% on shift and get the job done, especially on busy shifts. Rosie will never be late, but I will never let my section collapse under pressure. Different types of waiters, with different assets. Just help him understand if you know what I mean. Thanks :).'*

17. On 30 December 2024, the claimant sent 3 WhatsApp messages to BM stating *'Can you double check my hours yesterday when you get a chance? I write down my hours and tips at the end of each shift and I have a feeling Evan is starting to round down my hours when I work with him. He also wouldnt let me see my App payment tip totals at the end of last night either. Its fine if he doesnt like me.. But he can't start infringing on my financial rights... Thanks.'* *'I clocked in yesterday at 12, only had a 55 minute break because evan told me I had to be back at 5 sharp when my break only started at 4:06 and then I finished at 8:35. He rounded my hours down by around 10 minutes. Please correct this and let him know that what he is doing is illegal. Thanks'* and *'At the end of the shift he also came over and forced me to clock out before I even got changed. Just a lot of little micro aggressions. He doesnt do this to the other waiters. Its unfair treatment... Not sure what his deal is, but he needs to stop or im going to have to take more serious action against him.'*
18. On 2 January 2025, the claimant sent a WhatsApp message to BM stating *'After I sent that message to Evan, I spoke with him in person on Tuesday about treating me fairly at work. He told me he understood my concerns. But then at the end of my shift, my credit card tips seemed strangely low, I checked the "recall table" option on the till and it looked like Evan transferred table 25 who I had taken payment for to his name so I would not recieve the tips. I asked him about it and he said that the person's name next to the table number is the person who opened the table not who closed it. This seemed strange as Mike had opened table 23 and I had closed it, and my name was next to table 23, not Mike's... When mike finished his shift, he told me I could have all the tips on his remaining tables, especially 25 as he said the lady on 25 was being very rude and he was giving them minimal service and if I managed to get a tip out of them that I deserved it. After I questioned Evan about the transferred table, he went back to the till while I was cleaning tables and I think he put table 25 back onto my name. But it should never have been transferred to him in the first place, not only because I did the second half of service and took the payment, but he was also a shift manager who I was told was not supposed to be taking tips in that role. I took a picture of what I am talking about and will add it below. Can you tell me whether it is the person who opened the table or who closed the table who's name is listed next to the table on the recall table options? I really dont want any problems at work, but if Evan did transfer table 25 to his name after we had just spoken earlier in the shift about treating me fairly at work, it is just totally unacceptable. Its almost like he has a compulsion to treat me unfairly compared to the other workers... I just really dont get it.'*
19. During his shift on 14 February 2025 the claimant stated to BM that he did not think it was appropriate to use a cup to serve ice, which was the practice in the Restaurant. He asked if there was an ice scoop or tongs he could use instead.

20. On 19 February 2025 the claimant posted on the Restaurant's WhatsApp group chat, in response to management posting some customer reviews on that group chat. He stated *'Yeah I mean.. those 79%'s and 80%'s clearly say we were understaffed and crazy busy.. monday night was mental, we had run out of so many things.. Serving 10+ tables alone including one of 6 who were arriving at different times... nothing much a server can do really except try their best and keep a positive attitude. Valentines day reviews were great because we were fully staffed'*
21. The respondent operates an intranet for all employees, called 'Slice'. Within that there is a social media type feed where employees can add posts. For example, positive stories in relation to a restaurant, or fundraising activities being undertaken. The respondent's 'Community Code' informs employees that any/all posts on Slice must be positive and respectful. At around 12.30 on 26 February 2025, the claimant posted on Slice regarding his views on a new team t-shirt and clothing merchandise, which was being promoted to celebrate the respondent's 60th year. In his initial post he provided a screenshot of the merchandise, and stated *'TRIGGER WARNING: Has anybody seen the new designs for the team shirt and merchandise yet? Maybe these should be the new head office uniforms!! Its obvious they never consult with the workers who actually have to wear this garbage.'* He later added a comment to his post, stating that the merchandise clothing looked like it had swastikas incorporated into the design. At around 14.30 the territory manager added a comment to the claimant's post, explaining that the merchandise would be gifted to all employees to mark the 60th birthday, there was no requirement to wear them and, whilst people may have differing views, they should be respectful with the language they use when posting or commenting. At 14.40 BM messaged the claimant, stating *'I recommend you remove the post from slice. The territory manager has already been in touch with the restaurant regarding it. Slice isn't a platform for complaints and criticisms. People have worked hard on trying to generate excitement and positivity to celebrate the company's 60th year. You don't have to like everything the company does, but genuine complaints must go through proper channels. Any complaints come to me or Sam and we can escalate.'* The claimant responded at 15.30 stating *'Yeah, I'd like to formally complain about the swastikas incorporated into the merchandise clothing.'* At around 16.30, he added a further comment to the initial post, asking why his previous comment had been removed. He stated in the comment *'some of those designs do resemble swastikas and will be highly offensive to some ethnic and religious groups hence my "trigger warning"'*. He subsequently deleted the post on Slice, and the merchandise was thereafter withdrawn by the respondent and replaced with a different design.
22. On 1 March 2025, the claimant was called into an informal meeting with BM & SM. His post on Slice was discussed, with reference to the respondent's policy

regarding online and social media use, including regarding Slice. The claimant indicated that he knew that Slice was not the appropriate format to raise any concerns he had, and acknowledged that he should have raised his concerns through a different channel. A number of other matters were discussed, such as:

- 22.1. The frequency and tone of the claimant's WhatsApp messages to BM personally in relation to work matters, often on her non-working days. He was asked to contact the duty manager, or use the Restaurant email for any work related matters;
 - 22.2. His timekeeping; and
 - 22.3. Sending music that he had created to staff members. The claimant indicated that he had sent a link to his YouTube channel to MT only, as he had requested it. He stated that he had not sent it to anyone else. That was accepted. BM had however raised this with the claimant as female members of staff had indicated to her that they had seen the channel, and the cover picture was of the claimant nude in a field, which they had been shocked by.
23. On 13 March 2025, the claimant was sent a letter entitled 'Letter of concern'. Within the letter the claimant was reminded of the respondent's 'Community Code' in relation to posts on Slice, and a copy was enclosed with the letter. The concerns discussed with the claimant, in relation to the tone and frequency of messages to BM personally, was also referenced. None of the other issues/concerns discussed at the meeting were referenced. The letter did however refer to a further issue, namely that the claimant had posted on the Restaurant's WhatsApp group that SM looked like *'he just got dropped off from a Mumbai helpline call centre'*. He was informed that was not appropriate language to use, and that something intended as a joke may be found to be offensive by others. It was stated that the letter was not a formal warning, it was simply to record that issues had been discussed.
 24. On 3 April 2025, the claimant orally stated to BM that he thought they needed more staff on shift. He stated that there was no KP to clean the dishes, so dirty dishes were piling up, and they were running out of surfaces to put them on. He also raised with her that he felt that MT had not been doing his fair share of work that day and stated *'I'm not sure what is wrong with Mike, maybe he is having an off day.'* BM mentioned what the claimant had stated about MT to other managers in the following days, so they could keep an eye on MT and ensure he was OK.
 25. On 8 April 2025, there was an altercation in the Restaurant between the claimant and MT, who were the only waiters working at the time. This

developed as the restaurant was busy, and they were both struggling to keep up with customer requirements. A number of comments were made during the altercation, including MT stating to the claimant *'why don't you just leave, nobody fucking likes you, fucking American, go back to your country you fucking yank'* and the claimant stating to MT *'fuck off bald loser'*. While they separated and continued to work following this initial incident, animosity and oral bickering continued throughout the remainder of their shift, with MT repeating the comments he had made previously.

26. The claimant was upset and angry during and following the altercation with MT. He felt hurt and humiliated, particularly as the comments were stated in front of others, including members of the public. He orally provided a statement, in relation to the incident, to SM, that day. SM typed this, as the claimant did so, and subsequently emailed a copy of it to the claimant. The statement included the comments which MT had made to the claimant (which are in quotes in the above paragraph), stating that the comments were repeatedly made for the remainder of the shift. Within the statement there was reference to the restaurant being understaffed for the volume of customers in that sitting, and that MT had been informed that the claimant had stated to BM that he felt MT had been having an 'off day', when they worked together the previous week. SM informed the claimant that there would be an investigation. While the claimant continued working following the altercation, and he did not work on the same shift as MT, he felt uncomfortable doing so. He did not take time off work, as he was reliant on his wages. He did not seek any medical assistance or intervention, focusing instead on trying to stay positive. He did however remain upset and felt that action should be taken against MT as a result of his actions.
27. At 19:25 that evening, the claimant posted on the Restaurant's WhatsApp group chat, stating *'Can we please work on not having understaffed shifts where you are forced to take shortcuts and cause other workers to have go's at you creating a hostile environment on shift. Can managers also practice confidentiality when a worker tells them something in private to prevent hostile situations at the workplace. Thank you.'*
28. BM was informed of the altercation between the claimant and MT when she next attended work. Other than ensuring that the claimant and MT worked on different shifts going forward, she did not take any further action. She had no experience of disciplinary issues, and the Restaurant was busy due to the Easter school holidays (the Easter weekend falling on 18-21 April 2025), so her focus was on that. She then had a period of compassionate leave due to a bereavement, and subsequent time off to attend the funeral.
29. On 21 April 2025, the claimant asked SM whether an investigation had been started regarding MT's conduct towards him on 8 April 2025. SM stated that it

had not. The claimant asked why not, stating *'Surely the company should have started an investigation by now. It's been 2 weeks already.'* SM indicated that he didn't know.

30. On 11 May 2025, the claimant spoke to BM at the end of his shift. He asked why MT had not been investigated yet, stating it was almost 5 weeks since the incident and no action had been taken. He stated that MT was getting all the Saturday shifts, whereas he was being allocated midweek shifts, which was unfair. BM indicated that she would look at shift allocation and see if she could give him a Saturday shift.
31. Following her discussion with the claimant, BM took advice from senior managers. They advised her that an investigation should be conducted in relation to the incident on 8 April 2025. BM did not feel that she had the experience or expertise to conduct this. BM was informed that SH had experience in this area and she should contact her, to see if she would be willing to conduct an investigation in relation to this matter. BM did so, informing SH that there had been an altercation between two waiters in the Restaurant on 8 April 2025, but nothing more. SH agreed to conduct the investigation into that matter, and it was agreed that BM would sit in on the investigation meetings, as a note taker, to gain some experience of investigations. SH had not met the claimant or MT prior to commencing her investigation, and had no knowledge of either individual.
32. On 18 May 2025 the claimant asked BM during a shift *'Why can't we get a KP on busy days?'* He felt that having a KP on shift would improve the working environment for everyone and that, given the profits the respondent made, they could afford the cost of a KP on busy days.
33. SH attended the Restaurant on 20 May 2025, to conduct investigation meetings. EB was duty manager that day. He was aware of why SH was attending the Restaurant. He stated that he understood that there were other issues regarding the claimant, stating that he had been told that the claimant had made a comment to other members of staff about wiping a dessert on his genitals. He stated that he had not been present, but provided the names of the individuals who he understood were involved to SH. SH added that as a point to cover in her investigation. SH initially met with SM and another member of staff who had been working on 8 April 2025, then the claimant. None were given notice that the meetings were to take place. She had intended to meet with MT that day also, but he was not present that day, as he had swapped his shift.
34. In his meeting with SH, the claimant accepted that there had been an argument between him and MT on 8 April 2025 and that this occurred, in part, on the Restaurant floor. He stated that MT started the argument by aggressively

telling the claimant that he was *'being fucking lazy'*, when the claimant left brownies on the bar, while serving a customer. He stated that he felt the altercation with MT happened as a result of understaffing due to budget cuts and a breach of confidentiality by management. He stated that he should not have been put in that unsafe position by management. He stated that budget cuts were impacting health and safety, particularly mental health. He accepted that he said *'fuck off bald loser'* to MT. He stated that he should not be accountable for anything he said to MT however, considering the circumstances. SH asked the claimant whether a comment had been made by him about wiping a desert on his genitals. He stated that did not happen, and he had no idea what it was about. SH found the meeting to be difficult. She found the claimant to be rude, disrespectful and defensive. She felt that at times he was aggressive and did not give her a chance to speak. She required to ask a lot of follow up questions to understand and explore the points he was making. Minutes of the meeting were prepared and sent to the claimant. He amended these significantly and returned them to SH on 24 May 2025. SH did not accept all of the amendments, but kept the claimant's amendments on file.

35. On 21 May 2025, the claimant sent an email to BM stating *'I have now made 2 protected disclosures to you and head office regarding discrimination at the work place and other disclosures regarding confidentiality breaches and purposful understaffing of shifts causing workers to take shortcuts which jeopardises health and safety. On all occasions, instead of taking necessary actions to protect me, you and the company have decided to fabricate false retroactive allegations against me causing further detriment. These false allegations were never brought up to me at the time they supposedly happened, and you or the company could not provide the identity of who you claim was making the false allegations. Its clear they are being fabricated as a corporate insurance policy so the company can unfairly dismiss me if deemed necessary. At yesterday's meeting, the lady who was conducting the meeting, tried to coax and harass me into taking accountability for how I reacted to hate speech directed towards me at the work place related to my nationality. She also tried to harass me into taking accountability for my reaction to confidentiality breaches by management and understaffing of shifts. I assertively stated that I believed I had zero accountability but she continued to try harass me into taking accountability. This communication style is highly unprofessional and unacceptable. I would just like to re-assert in writing that I believe I have zero accountability for my reactions to the situations in question. I would like to continue working at Pizza Express in a productive, peaceful and harmonious manner. But I expect Pizza Express to conduct themselves lawfully. I expect that all harassment and false allegations cease and that I am allowed to continue working in peace. I do not wish to take legal action against pizza express, but if they continue with their unlawful behaviour I will have no other choice. Again, I would like to emphasise that my first choice is to continue*

working at pizza express in a productive, peaceful and harmonious manner. Please feel free to share this email with whoever necessary. Thank you.' He sent a further email that evening stating that he did not believe that the company had followed fair procedure with the investigation meeting, as he was not given any notice of it, to allow him to prepare, which was required under the Acas Code.

36. SH returned to Aberdeen on 23 May 2025 and met with MT then, as well as 2 other members of staff. Whilst he had a different view on how the altercation commenced, MT admitted his involvement in the altercation and that he had said a number of the things asserted. He accepted he was at fault, expressed remorse and indicated he would take a different approach if the situation arose again, by stepping away and contacting a manager. Given MT's concessions, the meeting was relatively short.
37. On 23 May 2025, the claimant was invited to a further investigation meeting, to be conducted via Teams on 27 May 2025. SH wanted to put MT's position to the claimant, to allow him to comment on that, prior to concluding her investigation. The claimant did not attend that meeting. Instead, he sent an email to SH on 23 May 2025 at 21:07 stating that he believed he had already answered all questions related to the allegations, so a follow up meeting was not necessary.
38. On 24 May 2025 the claimant sent an email to SH with a 4 page written grievance attached (the Grievance). The claimant stated in his email that he did not believe that a fair procedure had been followed in the investigation. The grievance was addressed to the HR Department and headed '*Formal Grievance and Demand to Terminate Unfair Investigation, Address Racial Harassment, Breach of Confidentiality, and Whistleblowing*'. SH passed the grievance to the respondent's Employee Relations Department (**ER**), as she understood that it was related to her investigation, so it would not be appropriate for her to address it. The first paragraph of the Grievance stated '*I am writing to raise a formal grievance regarding a procedurally unfair, unnecessary, and delayed investigation into an incident that occurred on April 8, 2025, which I believe is retaliatory and designed to justify my dismissal. I demand that the investigation be terminated and that I be allowed to resume my normal duties, as it unfairly targets my defensive reaction to racial harassment while ignoring the company's role in creating a hostile environment through understaffing (acknowledged as due to budget cuts) and a breach of confidentiality as documented in my witness statement recorded by the on-duty manager (Sam) on the night of the incident. These issues violate the ACAS Code of Practice on Disciplinary and Grievance Procedures, the Equality Act 2010, the Employment Rights Act 1996, and the Health and Safety at Work etc. Act 1974. I am asserting my legal rights and reserve the option to pursue*

employment tribunal claims for harassment, victimisation, whistleblowing detriment, and potential unfair dismissal if these matters are not resolved fairly.' The remainder of the document provided detail as to why the claimant believed this to be the case.

39. On 26 May 2025, the claimant sent an email to BM and member of the respondent's management entitled '*Formal Protected Disclosure*'. He stated this related the shift he worked the day before, which was '*unacceptably understaffed*'. He stated that it was unacceptable not to have a kitchen porter on busy shifts and this led to the KP area being '*overloaded with dangerously stacked dishes*' and surfaces being left '*filthy*'. He also stated that he had '*repeatedly informed all members of management that it is unacceptable to serve ice from the ice bucket with a cup. Waiters' dirty hands and fingernails come into contact with the ice, and female staff members who use fake nails, against company policy, risk further contaminating the ice if their nails break off.*' He attached video evidence.
40. On 28 May 2025, ER emailed the claimant to acknowledge the issues he had raised on 24 and 26 May 2025. They stated that they understood that the claimant's correspondence of 24 May 2025 related was '*in relation to concerns of a process currently underway regarding allegations raised against you and a colleague. This will be reviewed by the investigating manager and we would encourage you to engage in and discuss any concerns regarding this matter as part of the ongoing process.*' In relation to the concerns raised on 26 May 2025, ER advised the claimant that these would be investigated under the respondent's Whistleblowing Policy. He was informed that he would be contacted again, once an investigation manager had been appointed.
41. At 10:40 on 29 May 2025, the claimant emailed ER indicating that he was attaching copies of previous disclosures made to management regarding understaffing. He stated that the evidence provided demonstrated that the respondent had repeatedly failed to provide a safe and healthy environment for employees or the public. He stated that he had started early conciliation and was open to settlement negotiations, but would proceed with a Tribunal claim otherwise. At 16:02 that day he sent a further email stating that he no longer felt safe doing attending work due to ongoing health and safety breaches, harassment and victimisation. He asked that the respondent provide a prompt solution to ensure his safety and wellbeing.
42. On 29 May 2025, ER emailed the claimant acknowledging his recent emails. They confirmed that the disciplinary investigation, in relation to the claimant and his colleague, would continue. They highlighted that this was a fact finding exercise only and that a disciplinary hearing would be convened, if it was determined that there was a case to answer, which he would receive notice of. He was also informed that the evidence he had provided in relation to

disclosures would be passed to the manager who was dealing with that investigation. ER offered the claimant a temporary transfer to an alternative site, until matters were concluded. The claimant declined that offer and continued to attend work.

43. SH remained of the view that she required to have a further meeting with the claimant, before she could conclude her investigation, so was attempting to schedule a suitable time with the claimant. At 12:37 on 31 May 2025, she sent a further letter to him, asking him to attend a further investigation meeting on 2 June 2025. He responded, at 14:05, indicating that he would attend under protest, but the meeting was subsequently delayed further, as the claimant indicated that he could not attend meetings in the afternoon.
44. Each of the respondent's restaurants has an email address. Emails to each restaurant email address are intended for management in that restaurant. The respondent sends emails to management of each restaurant via those email addresses. This can cover issues such as budgets and forecasting. Staff can also send emails to the address of the restaurant they work in, to communicate issues to management. This can cover a variety of issues, including confidential matters such as sickness absences and the reasons for that.
45. Management in the Restaurant are able to access the Restaurant's emails via a PC in the office and via an iPad used in the Restaurant. The iPad was also used by staff to clock in and out and, occasionally, to print labels. While all staff could access the iPad to clock in/out, to access emails on the iPad a further code required to be entered.
46. On the evening of 31 May 2025, EB raised with BM that he had seen the claimant on the iPad, during the course of his shift, looking at emails. She asked BM to bring the iPad to her. He did so, and she discovered that a search had been conducted within the email system for the term *'budget cuts'*. She also discovered that, at 16:52 on 31 May 2025, an email chain dated 28 March 2025 was forwarded from the Restaurant's email address to the claimant's personal email address. The first email in the chain was from Mark Ryan, a Senior Territory Manager, at 11:09 on 28 March 2025, to each of the respondent's restaurants, and stated: *"Hi team After another poor few days vs forecast I need us to reduce our sales forecast for tomorrow by 15k in today by no later than 3pm. **We are forecasting 15k more than last Saturdays actual and this is now a real risk. Today also looks a risk. For Action Every Restaurant is to remove circa £300 - £500 in sales from the Saturday forecast and also reduce hours in line please. Below are the current forecasts for tomorrow in yellow and i will re run the numbers later today to confirm done. This is a non-negotiable guys.**"* The second email in the chain was from BM to Mark Ryan at 13:06 that day, stating: *'Hi Mark, We've cut about £350 off tomorrow, and I've reduced FOH by 4.5 or so hours, but we're already on*

minimum staff for a Saturday and our kids break up for holidays today so wary of cutting much more out. Thanks, Beth'.

47. BM contacted SH that evening to discuss what should be done in relation to what she had discovered. SH took advice from senior managers who, in turn, took advice from HR and ER over the course of the next few days.
48. At 22:46 on 31 May 2025, the claimant emailed the ER stating that he wished to raise a further disclosure, namely that staff continued to serve ice using a cup. The claimant attached video evidence to this email.
49. On 1 June 2025 the claimant emailed ER stating that he wished to make a further disclosure, namely that the Restaurant was so severely understaffed that day, that he required to work a 10 hour shift without any break, in violation of the Working Time Regulations 1998 and constituting a health and safety violation.
50. On Monday 2 June 2025, ER called SH to advise that the claimant should be suspended, pending a full investigation regarding what had occurred in relation to the emails on Saturday 31 May 2025. At around 5pm on 2 June 2025, SH informed the claimant, during a phone call, that he was suspended. He was informed that this was pending investigation into an allegation that he had accessed confidential and sensitive business data without authorisation and forwarded this to his personal email account, also without authorisation. A letter was sent to him later that day confirming this. The cover email confirmed that a further investigation meeting would take place on 5 June 2025.
51. On 2 June 2025, the claimant sent an email to ER referencing the email that had been sent from the Restaurant's account to his personal account. The claimant stated that he wished to make a formal protected disclosure regarding this email, stating that it clearly showed that head office mandated BM to understaff the Restaurant below what she deemed as the minimum operational limit, thereby neglecting health and safety standards. He stated that his suspension constituted victimisation and whistleblowing detriment.
52. On 4 June 2025, the claimant attended an investigation meeting with LD. He had been appointed, under the respondent's whistleblowing policy, to investigate the disclosures made by the claimant. During that meeting, the claimant reiterated the concerns he had regarding understaffing and ice contamination.
53. On 5 June 2025, the claimant attended a further disciplinary investigation meeting with SH. She asked him about comments MT had asserted the claimant made to him in the altercation on 8 April 2025, and about the allegation that he had accessed confidential and sensitive business data, without authorisation, and forwarded that data to his personal email account,

also without authorisation. He made reference to having made protected disclosures and SH reiterated that that was being considered by a different manager, under a different process. He stated that the allegations were made by people who previously targeted and bullied him, so their evidence was not credible as they had a grudge against him.

54. On 5 June 2025, the claimant emailed SH, LD & ER stating that MT and JD had previously admitted to being regular heavy cannabis users, that JD comes to work smelling of cannabis and that MT had stated in work that he was still high from the day before. He stated that *'their lack of sobriety on shift and in their home life seriously affects their credibility in regards to their unfounded allegations.'* He stated that this should be considered as another formal protected disclosure. LD acknowledged receipt on 7 June, expressing surprise that the claimant had not mentioned this at their previous meeting, but confirming that the allegation would now form part of his investigation. The claimant responded later that day. In his email he stated *'Now that I've got my memory going, I also caught [LG] frequently using her vape pen in the dry store or the fridge when she thought nobody was watching.'* He stated that her doing so constituted a further health and safety violation. He also stated that he had witnessed SM confronting JD about drug use at work.
55. SH concluded her investigation on 6 June 2025. While she had kept ER informed of the progress of her investigation, as an experienced investigator, she required very little input or guidance from them and the conclusions she reached were her own, based on the evidenced gathered in the course of her investigation. She prepared two reports detailing her findings – one in respect of the claimant (extending to 8 typed pages) and one in respect of MT. Her report in relation to the claimant detailed the process followed to investigate matters, the names of the 8 individuals interviewed and the dates on which those interviews were conducted. She summarised the evidence gathered in the course of the investigation and recommended that a disciplinary hearing be held in relation to three stated allegations (as noted in paragraph 54 below). Notes of the meetings with each witness, and other relevant evidence gathered, were appended to the investigation report. Her report in relation to MT followed the same format, albeit there was only one allegation in relation to him, namely in relation the events of 8 April 2025. She also recommended that a disciplinary hearing be held with MT in relation to that allegation.
56. MT attended a disciplinary hearing on 11 June 2025. The allegation against him was found to be established and to amount to gross misconduct. Taking into account mitigation however, including that he admitted the allegations, showed remorse and provided assurances that it would never happen again, as well as his length of service and clean disciplinary record, it was determined the appropriate sanction was a final written warning.

57. By letter dated 10 June 2025, the claimant was invited to a disciplinary hearing on 13 June 2025. The letter stated that the hearing would be chaired by JB and that the purpose of the hearing was to discuss three allegations of misconduct, namely:
- 57.1. Verbal abuse, aggressive and threatening behaviour, including discriminatory comments whereby on 08 April, an altercation occurred between the claimant and another colleague which escalated and became slightly physical. That the claimant referred to his colleague as a "*fucking bald loser*" and other insults such as "*incel cunt*", and that this was in front of guests who commented to other team members on the night and left, which may have brought the respondent into disrepute and a loss of sales (**Allegation 1**).
 - 57.2. Inappropriate comments, specifically that he attempted to pass a brownie to a female team member stating "*this is the one I rubbed on my balls*" (**Allegation 2**).
 - 57.3. Accessing confidential and sensitive business data without authorisation and forwarding this data to his personal email account, also without authorisation. Specifically, that he accessed the private and secured restaurant iPad to search for sensitive, private and confidential Company information and sent a private and confidential Company email to his own email address (**Allegation 3**).
58. The letter listed a number of documents, stating these were enclosed and would be considered at the hearing, such as the Investigation Report, witness statements from listed individuals, additional evidence (as listed) and relevant policies. Three of the witness statements listed (from SM, EB and a second statement from BM) were not in fact attached to the cover email. The claimant did not highlight this to the respondent, or request these, at any point prior to the termination of his employment.
59. On 12 June 2025, the disciplinary meeting was rescheduled to 16 June 2025, at the claimant's request. The disciplinary invite, and supporting documents (as above) were resent to the claimant. He responded that day stating that he would '*attend the meeting under protest as a formality as I have already categorically denied all of these false unfounded allegations made against me and have provided evidence supporting all of my claims against the company. But the company refuses to accept legitimate evidence and continues with their false narrative.*' He indicated that he had already started the Employment Tribunal process and that the court would '*most likely disregard these meetings considering they are unfounded, unfair, delayed and retaliatory in nature.*'

60. The claimant attended a disciplinary hearing on 16 June 2025. The meeting was chaired by JB. She had not met the claimant prior to the disciplinary hearing. She did not chair MT's disciplinary hearing. When asked by JB, at the outset of the meeting, if he had received the documents in advance of the hearing, the claimant indicated that he had '*briefly looked over*' them, that he categorically denied everything and was not sure of the purpose of the meeting: he had already answered questions about the allegations and was attending under the disciplinary hearing protest. It was a difficult meeting. JB continually tried to steer the conversation to the allegations, and the claimant continually tried to steer the conversation to his disclosures, which JB repeatedly indicated were being addressed in a separate investigation, so were not within her remit. The claimant sought to control the conversation during the meeting and, when JB sought to bring it back to the matters she wanted to discuss, the claimant refused to let her, telling her not to interrupt him and she must let him speak/finish/say whatever he wanted. During the meeting the claimant spoke over JB repeatedly and told her she was being '*ridiculous*', that she was '*so rude*' and '*incessantly rude*', that she was being disrespectful and that her behaviour was disgusting. He made sarcastic comments such as '*that wasn't so hard, was it*'. He raised his voice and was rude and abrasive throughout, even after JB called breaks, to try and defuse matters. At the end of the meeting, the claimant stated that he apologised if the meeting had been abrasive, and stated that JB may think he was being disrespectful. JB agreed that she did think that he had been very disrespectful in the meeting. In relation to the three allegations, the claimant denied them. He stated that his behaviour on 8 April 2025 was reasonable considering the provocation and hostile environment he was in, as a result of understaffing.
61. Following the disciplinary hearing, JB considered all of the evidence in order to reach a decision. She was not influenced or directed by anyone when doing so. The decision was hers alone. She reached the following conclusions:
- 61.1. **Allegation 1.** She found that both the claimant and MT showed aggressive behaviour towards each other, in view of customers. She concluded that each provoked the other, but provocation did not excuse the either individual's behaviour, which was unacceptable and unprofessional. The appropriate action in response to any provocation was for the claimant to remove himself from the situation. He did not do so. Whilst she accepted that the Restaurant was busy, she did not agree that it was understaffed, and she noted that the records showed there was a cleaner/KP on duty, despite the claimant stating this was not the case. She concluded that the shift being busy was not an acceptable reason for the claimant's behaviour. She found that customers left as a result of the altercation and spoke to other employees about their unhappiness of what was witnessed. She concluded that the claimant

may not have noticed the customers leaving, given that he was involved in an ongoing altercation.

- 61.2. **Allegation 2.** She noted that the claimant denied this allegation and asserted, during the disciplinary hearing, that both JD and LG were drug users who came to work smelling of cannabis every day. She noted that the claimant only raised this after he had seen the evidence against him, and that the investigation had not revealed any evidence which supported the claimant's assertion. She was unable to ascertain why Allegation 2 would be fabricated and found, on balance, that the comment had been made by the claimant.
- 61.3. **Allegation 3.** She noted that the iPad history demonstrated that a search had been conducted, within the emails on the iPad, for the term 'budget cuts', and that that search had been undertaken when the claimant was seen with the iPad. She noted that an email dated 28 March 2025 had been sent to the claimant's personal email address, again at the time when the claimant was seen with the iPad. Given these circumstances, and the claimant's reference to '*budget cuts*' in the disciplinary investigation, and his repeated allegations of '*understaffing*', she concluded that the claimant had purposely accessed confidential and sensitive business data and sent this to himself, without authorisation. She considered the claimant's assertion that '*regardless how it was sent*' that this was '*an instruction from senior management and head office*' to '*reduce labour below the safe operational minimum limit*'. She concluded however that the email did not state that, and there was no mention of anything related to a '*safe operational minimum limit*'.
- 61.4. **Conclusions/Sanction.** JB was accordingly concluded that there was credible evidence to support each of the allegations, and the conduct alleged was established. She concluded that, given this, whether the claimant had made protected disclosures or not (which she understood was being investigated separately) was not relevant to her decision. She took into account the points raised by the claimant in mitigation. This related to the first allegation only, as the other two allegations were simply denied. She reached the conclusions set out above, namely that provocation did not excuse the claimant's behaviour and the Restaurant was not, according to the records she reviewed, understaffed on 8 April 2025. She concluded that the established actions amounted to gross misconduct. She noted that the claimant had not shown any remorse or accountability, and took into account behaviour at the disciplinary hearing. She noted that he only had 9 months service with the respondent and had previously been issued with a Letter of Concern.

Having done so she determined that the appropriate sanction was summary dismissal.

62. JB wrote to the claimant on 20 June 2025 confirming her decision, and the reasons for this. His employment accordingly terminated that day. She confirmed that the claimant had the right to appeal against her decision. He did not do so.
63. At the time the claimant's employment terminated, his average weekly earnings were £330.44 gross/£306 net. He was not in the respondent's pension scheme.
64. On 25 June 2025, LD sent the claimant a letter detailing the conclusions of his investigation, under the respondent's whistleblowing policy, in relation to the claimant's disclosures. His conclusions were as follows:
 - 64.1. Having reviewed the forecasting information, sales data and labour data, there was no evidence to support the claimant's assertion that the Restaurant was understaffed. He concluded that the other evidence produced by the claimant did not support his assertion, setting out the reasons for that conclusion.
 - 64.2. In relation to ice contamination, he found that tongs had now been implemented.
 - 64.3. In relation to the videos produced by the claimant of dirty dishes, he noted that there were exceptional circumstances on that date, namely an open top bus parade following Aberdeen FC's Scottish Cup win the previous day, and that no food preparation was taking part in the area at that time, as that is done in the morning. He noted that internal and external food hygiene audits were regularly conducted, and revealed no concerns. In addition, no other member of staff shared the claimant's concerns.
 - 64.4. He noted that the claimant had been offered EAP support in relation to his mental health, but had not taken up the offer.
 - 64.5. In relation to the claimant working a 10 hour shift on 1 June 2025, without a break, he accepted that this occurred. He indicated that the records demonstrated that this was an isolated incident, but that steps had been taken to ensure that this did not occur again.
 - 64.6. There was no evidence to support the claimant's assertions of team members being under the influence of drugs at work, or vaping on the premises, or of the claimant raising any concerns or suspicions of this.

65. The claimant was informed of the process for progressing to stage 2, under the respondent's whistleblowing policy, if he was dissatisfied with the conclusions reached. No further action was taken by the claimant.

Submissions

66. There was a break in evidence from 21 to 30 April 2026. BM was the only remaining witness to give evidence on 30 April 2026. Parties were informed on 20 April 2026 that, if time allowed, submissions would be heard on 30 April 2026, immediately following BM's evidence. Failing which, they would be heard on 1 May 2026. There was insufficient time for submissions to be heard on 30 April 2026. At the conclusion of the evidence that day, Ms Moncur indicated that she had a written submission prepared, which she would email to the Tribunal and the claimant that evening, so it could be read by everyone prior commencement of the hearing the following day. She indicated that she did not intend to read it out, and it was agreed it would be read in advance by the claimant and the Tribunal. The claimant indicated that that he would wish to take the Tribunal through his submission, so any document lodged should not be read in advance.
67. The respondent lodged a 32 page written submission that evening. When the case called the following day, Ms Moncur indicated that she had nothing to add to this. The Tribunal, having read the respondent's submission, had no questions.
68. The claimant was then given the opportunity to make a submission. Prior to doing so, he stated that he had not had the opportunity to fully read the respondent's submission. He requested, and was granted, additional time to do so. He initially requested 30 minutes, but was afforded 1 hour and 15 minutes to do so, following a further request for additional time.
69. The claimant then gave his submission with reference to an 11 page document which he had lodged on the morning of 1 May 2026, in advance of the hearing commencing that day. Having done so, he then turned to the respondent's submission, responding initially, on a point by point basis, to their submission regarding the credibility of each of the witnesses. He then requested, and was granted, a further 30 minutes to resume consideration of the respondent's submission. He was informed that the expectation was that the remainder of his response to the respondent's submission would take no more than 30 minutes. He was in fact afforded an hour to do so, and read from a document on his phone while doing so. He subsequently lodged the document he had read out, which he indicated had been produced using AI during the final break.

70. As the parties' submissions are, almost exclusively, set out in writing, they are not summarised or reproduced in this Judgment. They have however been carefully considered.

Relevant Law

Victimisation

71. Section 27 Equality Act 2010 (**EqA**) states:

- '(1) A person (A) victimises another person (B) if A subjects B to a detriment because-
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act-
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.'

72. There is no requirement for a complaint to explicitly reference the EqA for it to constitute a protected act.

73. For the purposes of a victimisation complaint '*Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage*' (paragraph 9.8, **EHRC: Code of Practice on Employment (2011)**). In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An '*unjustified sense of grievance*' is not enough.

Burden of proof

74. Section 136 EqA provides:

'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'

75. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of **Igen v Wong** [2005] IRLR 258, and **Madarassy v Nomura International Plc** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish a first base or *prima facie* case of direct discrimination or harassment by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.
76. In **Madarassy**, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected characteristic and that there was a difference in treatment. Those facts only indicate the possibility of discrimination. They are not, of themselves, sufficient material on which the tribunal 'could conclude' that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination. The Tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the Tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as explained in **Laing v Manchester City Council** [2006] IRLR 748, an EAT authority approved by the Court of Appeal in **Madarassy**.

Protected Disclosures

77. Section 43A of the Employment Rights Act 1996 (**ERA**) provides:

'In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.'

78. A qualifying disclosure is defined in section 43B ERA as 'any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
 - a. That a criminal offence has been committed, is being committed or is likely to be committed;

- b. *That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
 - c. *That a miscarriage of justice has occurred, is occurring or is likely to occur;*
 - d. *That the health or safety of any individual has been, is being or is likely to be endangered;*
 - e. *That the environment has been, is being or is likely to be damaged; or*
 - f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.'*
79. Section 43C ERA states that *'a qualifying disclosure is made in accordance with this section if the worker makes the disclosure to his employer...'*
80. In **Williams v Brown** UKEAT/0044/19, His Honour Judge Auerbach stated:
- '9. It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.*
- 10. Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. That is for two reasons. First, it will identify to the reader unambiguously which, if any, of the five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the Tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn its reasoning and conclusions in relation to those which are in dispute.'*
81. In **Kilraine v London Borough of Wandsworth** [2018] IRLR 846, at paragraphs 35 and 36, the Court of Appeal set out guidance on whether a particular statement should be regarded as a disclosure of information:
- '35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs (a) to (f).' Grammatically, the word 'information' has to be read with the qualifying phrase 'which tends to show [etc]'* (as, for example, in the present case, *information which tends to show 'that a person has failed or is likely to fail to*

comply with any legal obligation to which he is subject'). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1).

36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill J in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters, and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.'

82. In **Simpson v Cantor Fitzgerald Europe** [2020] ICR 236, the EAT stated:

'43... As the Court of Appeal in Kilraine v Wandsworth London Borough Council [2018] ICR 1850 made abundantly clear, in order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content and specificity such as is capable of tending to show breach of a legal obligation...

69. The tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach.'

Detriment Claim – Protected Disclosures

83. Section 47B ERA states that:

'A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.'

84. In **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An 'unjustified sense of grievance' is not enough.

85. Whether a detriment is 'on the ground' that a worker has made a protected disclosure involves consideration of the mental processes (conscious or unconscious) of the employer acting as it did. It is not sufficient for the Tribunal to simply find that 'but for' the disclosure, the employer's act or omission would not have taken place, or that the detriment is related to the disclosure. Rather, the protected disclosure must materially influence (in the sense of it being more than a trivial influence) the employer's treatment of the whistleblower (***Fecitt and others v NHS Manchester*** [2012] IRLR 64).
86. Helpful guidance on the approach to be taken by a Tribunal when considering claims of this nature is provided in the decision of ***Blackbay Ventures Ltd (t/a Chemistree) v Gahir*** [2014] IRLR 416 at paragraph 98.

Automatically Unfair Dismissal – Protected Disclosures

87. Section 103A ERA states that:

'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 the employee made a protected disclosure.'

88. In ***Fecitt and others v NHS Manchester***, the Court of Appeal held that the causation test for unfair dismissal is stricter than that for unlawful detriment under s47B ERA: s103A ERA requires the disclosure to be the primary motivation for a dismissal.
89. The case of ***Bolton School v Evans*** 2007 ICR 641, CA, establishes that an employee may be fairly disciplined or dismissed for misconduct, even where that misconduct is closely connected to a protected disclosure. In that case, an employee hacked into his employer's computer system to demonstrate that security was inadequate, and then told his employer what he had done. He was disciplined for accessing the system and he resigned in response to that. He sought to argue that his conduct was 'part and parcel' of his disclosure and so, if he was constructively dismissed for misconduct, that meant that he was dismissed by reason of the protected disclosure. While the claimant was successful before the Tribunal (who held that he had been unfairly dismissed as he had made a protected disclosure and had suffered a detriment because of that disclosure), on appeal, both the EAT and the Court of Appeal held that the principal reason for the disciplinary action was not the disclosure about the vulnerability of the system, but his misconduct in hacking into the computer system. The ERA provides protection for disclosures, but not other conduct by the employee, even if it is in some way connected with that disclosure.

Discussion and Decision

Harassment related to race

90. The respondent conceded that MT had made comments towards the claimant on 8 April 2025, as documented in his WhatsApp message and witness report on the same date, which constituted harassment related to race. That complaint accordingly succeeds.

Disclosures – s43A-H ERA

91. The respondent accepted that disclosures made by the claimant, as set out in paragraphs 34-35, 38-39, 41, 48-54 & 60 above, amounted to protected disclosures (list of issues paragraphs 2.1.12-2.1.24 inclusive). The Tribunal considered each of the remaining matters relied upon by the claimant as protected disclosures. The Tribunal was mindful that five elements require to be considered in determining whether each asserted disclosure amounted to a qualifying disclosure (was there a disclosure of information, did the claimant believe that the disclosure tended to show a relevant failure, was that belief reasonable, did the claimant believe that the disclosure was made in the public interest, was that belief reasonable?). Unless all five conditions are satisfied, there will not be a qualifying disclosure.
92. The Tribunal's conclusions in relation to each of the remaining asserted disclosures, and whether they were qualifying and protected disclosures, are set out below:
- 92.1. **In a WhatsApp message dated 14 December 2024, related to unfair treatment and bullying by EB.** The full text of the message sent by the claimant is set out in paragraph 16. The only information disclosed is that EB lectured the claimant because he was 1 minute late. This was not a disclosure of information tending to show a relevant failure. The claimant did not assert that any legal obligation had been, or was likely to be breached, or provide information tending to show that. If the claimant believed that the very limited information disclosed tended to show a relevant failure, that belief was not reasonably held given the content of the message. The message related to how the claimant alone was being treated. While he stated in evidence that he felt these comments were made in the public interest, as the respondent employees lots of employees, the Tribunal did not accept that he believed that when making the comments, given the content of the message. It relates to him alone, with no reference to others. The claimant was simply raising that he felt that EB could and should adopt a different approach, rather than the approach he had taken with the claimant on that particular day. If the claimant did believe that he was

making a disclosure in the public interest, the Tribunal concluded, given the content of the message, that that belief was not reasonably held. The Tribunal accordingly concluded that this was not a qualifying disclosure.

92.2. **In a WhatsApp message dated 30 December 2024, related to breach of financial obligations, unfair treatment and bullying by EB.** The text of the three messages sent by the claimant that day are set out in paragraph 17. In his messages the claimant provides information in relation to the hours he worked the previous day and stated that EB had rounded his hours down by 10 minutes at the end of the day. He asked for that to be corrected and asserted that it was illegal. The Tribunal accepted that the claimant believed that the information he disclosed tended to show that the respondent was breaching a legal obligation to pay him for hours worked, and that that belief was reasonably held in the circumstances. The concerns raised by the claimant related solely to how he, personally, had been treated. There was no suggestion within the messages that the claimant reasonably believed that those concerns were raised in the public interest, or impacted anyone other than him. He expressly states *'He [EB] doesn't do this to the other waiters.'* The Tribunal concluded that the claimant did not believe, when sending the messages, that the concerns he raised in his messages were in the public interest. Alternatively, if he did, that belief was not reasonably held, given the content of the messages and the context. The Tribunal accordingly concluded that this was not a qualifying disclosure.

92.3. **In a WhatsApp message dated 2 January 2025, related to breach of financial obligations, unfair treatment and bullying by EB.** The full text of the message sent by the claimant is set out in paragraph 18. He stated that he thought that EB may have transferred a table out of the claimant's name and then back again. He did not assert that that had in fact been done, or that there had been, or was likely to be, a relevant failure, such as a failure to comply with a legal obligation. The main purpose of his message was to seek clarification about how tables should be allocated. In relation to that he was requesting, rather than providing, information. That does not amount to a disclosure of information. Further, the message related solely to how the claimant may be being treated by EB. He stated in his message that he had spoken to EB about treating *him* fairly at work, and that *'Its almost like he has a compulsion to treat me unfairly compared to the other workers'*. It was clear from this that he considered this related solely to him. The Tribunal concluded that the claimant did not believe, when sending the message, that the concerns he raised in his message were in the public

interest. Alternatively, if he did, that belief was not reasonably held, given the content of the message and the context. The Tribunal accordingly concluded that this was not a qualifying disclosure.

92.4. **In an oral disclosure to BM on 14 February 2025 in relation to serving ice.** The Tribunal's findings in relation to this are set out in paragraph 19. The claimant asserted, in oral evidence, that he had stated something to the effect of the comments set out in the list of issues at 2.1.4. He indicated that, while in quotes, the words stated in the list of issues were not the precise words used. The Tribunal did not however accept that the claimant stated this to BM at that stage. On the claimant's evidence, he expressly stated on 14 February 2025, that waiters' hands were filthy, touching dirty plates, glasses and chemicals and then touching the ice. He stated that he informed BM that use of a cup, rather than an ice scoop or tongs, was therefore a huge cross contamination and allergy risk, presenting a risk to health and safety, and that he had never seen this done before, in all of his years working in UK hospitality. On his evidence, having raised these concerns, in those terms, BM simply shrugged her shoulders and stated '*that's how we always do it*', took no action and the practice continued. The Tribunal concluded that it is not credible that, if the claimant had articulated such serious concerns at that stage, that he would simply accept that response and not take steps to escalate his concerns, for a period of 3.5 months, in the face of total inaction in relation to the matter. Instead, on balance, the Tribunal accepted BM's evidence and concluded that the claimant simply stated in February 2025 that he did not think use of the cup was appropriate, and asked if there were tongs he could use instead. It was not until 26 May 2025 (see paragraph 38), that he first articulated serious concerns in relation to the practice. He stated in his written complaint that day that he had repeatedly informed management that it was not an acceptable way to serve ice. While he went on to explain why he did not feel that was acceptable in that message, he did not assert in his message that he had informed management of those issues previously. In relation to what was disclosed on 14 February 2025, the Tribunal found that this did not contain sufficient factual content and specificity capable of tending to show that health and safety was had been, was being or was likely to be endangered. The Tribunal accordingly concluded that it was not a qualifying disclosure.

92.5. **In a WhatsApp message on 19 February 2025, regarding workplace difficulties and poor reviews from the public as a result of being severely understaffed.** The full text of the message sent by the claimant on that date is set out in paragraph 20. He alleged that customer reviews demonstrated that they were '*understaffed*' and '*crazy*

busy'. He referred to the number of tables he had been serving, and that the Restaurant had run out of things that night. The Tribunal found that the very limited information disclosed did not contain sufficient factual content and specificity capable of tending to show a relevant failure. If the claimant believed that the information disclosed in his message tended to show that, that belief was not reasonably held given the content of the message. The Tribunal accordingly concluded that it was not a qualifying disclosure.

- 92.6. **On 26 February 2025, via the respondent's social media platform regarding racist symbolism reminiscent of a "Nazi swastika" being incorporated into new company merchandise.** The Tribunal's findings in relation to this are set out in paragraph 21. The Tribunal concluded that the claimant's original post was not a qualifying disclosure. It did not contain any information tending to show a relevant failure. If the claimant believed that the information disclosed in his original post tended to show that, that belief was not reasonably held given the content of the post. The Tribunal accordingly concluded that it was not a qualifying disclosure. The Tribunal concluded however that the claimant's subsequent comments, particularly the comment made at around 16:30, regarding the merchandise designs resembling swastikas, and therefore potentially being highly offensive to certain groups, had sufficient factual content and specificity capable of tending to show a relevant failure, namely harassment under the Equality Act 2010. The Tribunal found that the claimant believed that the information disclosed tended to show that this was the case. The Tribunal found that the claimant's belief was reasonably held. The Tribunal concluded that the claimant believed that the disclosure of information was made in the public interest: it related to anyone working in or attending the respondent's restaurants. The Tribunal concluded that that belief was, in the circumstances, reasonably held. It was therefore a qualifying disclosure. Given that it was made internally, it was also a protected disclosure.

- 92.7. **Comments made to BM on 3 April 2025.** The Tribunal's findings in relation to what the claimant stated to BM on 3 April 2025 are limited to those set out in paragraph 24 above. The Tribunal accepted that the claimant made reference to his view that the Restaurant was understaffed and that they needed a KP on shift. The Tribunal accepted that he stated that he believed that MT was having an off day. The Tribunal did not accept that the claimant went beyond that. In particular, the Tribunal did not accept that the claimant indicated to BM that MT had made the comments attributed to him in paragraph 2.1.7 of the list of issues. These comments were first mentioned by the claimant in

October 2025, when amending the list of issues. The Tribunal concluded that, had these comments been made by MT, and had the claimant reported them to BM, this would have been mentioned by the claimant during the conduct investigation or the disciplinary hearing, or in writing by the claimant during his employment. That is particularly so given that the claimant was complaining about MT harassing him only a few days after these comments were apparently made. In relation to the information which was disclosed, namely that the claimant felt that the Restaurant was understaffed and that they needed a KP during busy shifts, the Tribunal concluded that these comments did not contain sufficient factual content and specificity capable of tending to show that health and safety was had been, was being or was likely to be endangered. If the claimant believed that his statements tended to show a relevant failure, that belief was not reasonably held given of what he stated to BM. The Tribunal accordingly concluded that it was not a qualifying disclosure.

92.8. **In WhatsApp message to management and in a witness report on 8 April 2025.** The full text of the WhatsApp message sent by the claimant on 8 April 2025 is set out in paragraph 27. The comments made by the claimant did not contain sufficient factual content and specificity capable of tending to show a relevant failure. Hostile environments on shift and hostile situations on shift do not, of themselves, constitute a relevant failure. If the claimant believed that the information disclosed tended to show that, that belief was not reasonably held. The comments which were made related to the situation he had been faced with on shift. The Tribunal concluded that the claimant did not believe, when sending the message, that the concerns he raised in his message were in the public interest. Alternatively, if he did, that belief was not reasonably held, given the content of the message and the context. The Tribunal accordingly concluded that this was not a qualifying disclosure. In relation to the witness statement which the claimant provided and SM typed, the Tribunal's findings in relation to this are set out in paragraphs 25 and 26. The Tribunal found that these statements had sufficient factual content and specificity capable of tending to show breach of a legal obligation, namely harassment under the Equality Act 2010 and/or a criminal offence. The Tribunal found that the claimant believed that the information disclosed tended to show that this was the case. The Tribunal found that that belief was reasonably held. The Tribunal concluded that the claimant believed that the disclosure of information was made in the public interest: it related to a matter which he believed constituted a criminal offence. That belief was reasonably held. Given that it was made to his employer it was also a protected disclosure. For the avoidance of doubt however, the Tribunal concluded that this was a

protected disclosure in relation to that matter only, not the reference to 'understaffing' or any other issues referenced in the statement. The allegations of 'understaffing' did not contain sufficient factual content and specificity capable of tending to show that the health and safety of any individual had been, was being, or was likely to be endangered, as the claimant asserted in evidence. If the claimant believed that the allegation of 'understaffing' tended to show a relevant failure, that belief was not reasonably held in the circumstances, given the content of the statement and the very limited information disclosed.

- 92.9. **Comments made to SM on 21 April 2025.** The Tribunal's findings in relation to what the claimant stated to SM on 3 April 2025 are limited to those set out in paragraph 29 above. This is consistent with the claimant's oral evidence. The claimant was asking for information, in relation to whether an investigation had started. He was not disclosing information. The comments made by the claimant did not contain sufficient factual content and specificity capable of tending to show a relevant failure. If the claimant believed that the information disclosed tended to show that, that belief was not reasonably held. The Tribunal concluded that the claimant did not believe that he was disclosing information in the public interest. Alternatively, if he did, that belief was not reasonably held, given the nature of the comment. The Tribunal accordingly concluded that this was not a qualifying disclosure.
- 92.10. **Comments made to BM on 11 May 2025.** The Tribunal's findings in relation to what the claimant stated to BM on 3 April 2025 are limited to those set out in paragraph 30 above. This is consistent with the claimant's oral evidence. The claimant was again asking for information, in relation to why an investigation had not yet started. He was not disclosing information. He stated that it was unfair that MT was getting all the Saturday shifts. While that comment contained information, it did not contain sufficient factual content and specificity capable of tending to show a relevant failure. If the claimant believed that the information disclosed tended to show that, that belief was not reasonably held. The Tribunal concluded that the claimant did not believe that he was disclosing information in the public interest. Alternatively, if he did, that belief was not reasonably held, given the nature of the comment. The Tribunal accordingly concluded that this was not a qualifying disclosure.
- 92.11. **Comments made to BM on 18 May 2025.** The Tribunal's findings in relation to what the claimant stated to BM on 18 May 2025 are limited to those set out in paragraph 32 above. This is consistent with the claimant's oral evidence. The claimant was, in essence, stating that having a KP on busy days would be beneficial. The comments made

by the claimant did not contain sufficient factual content and specificity capable of tending to show a relevant failure. If the claimant believed that the information disclosed tended to show that, that belief was not reasonably held. The Tribunal accordingly concluded that this was not a qualifying disclosure.

Victimisation – Protected Acts

93. The respondent accepted that each of the acts initially relied upon by the claimant (namely those as set out in paragraphs 26, 29 and 30, as reflected in list of issues section 5.1) amounted to protected acts. They did not accept that his comments on 26 February 2025 amounted to a protected act however. The Tribunal's findings in relation to what the claimant stated in his original post and subsequent comments are set out in paragraph 21. The Tribunal concluded that, in the comments the claimant added to his initial post, particularly the comment made at around 16:30, the claimant was making an assertion for the purposes or in connection with the EqA: namely asserting that the merchandise would create an offensive environment to certain people, related to race and/or religion. The Tribunal accordingly concluded that this was a protected act, in accordance with section 27(2)(c) EqA.

Detriments – Protected Disclosures and Victimisation

94. The Tribunal then considered whether the claimant had been subjected to the detriments asserted and, if so, whether this was because of the established protected disclosures and/or protected acts. The Tribunal's conclusions in relation to each are as follows:
- 94.1. **Issuing a letter of concern to the claimant on 13 March 2025.** The Tribunal's findings in relation to this are contained in paragraphs 22 and 23. The Tribunal accepted that the claimant was given a letter of concern, and that this amounted to a detriment. The Tribunal did not however accept that the letter of concern was issued because of the claimant's protected disclosure/act, or that it was materially influenced by that. The respondent's focus, in calling the claimant to a meeting and then issuing the letter of concern, was the fact that the claimant had breached the respondent's Community Code in his initial post (where he criticised the merchandise generally, referring to it as 'garbage'), as well as the other items referred to in the letter. The claimant accepted that he was aware of the terms of the Community Code, that this required that all posts on Slice be positive and respectful, and that his initial post (referring to the merchandise as garbage and suggesting that it should be the new head office uniform) did not adhere to that. It is clear from the fact that the claimant was expressly informed that, if he had genuine complaints he could raise those with the respondent via

other channels (paragraph 21), but that Slice was not the appropriate method of doing so, that the respondent's concern was the manner in which the claimant raised these issues, not the issues which had been raised. The claimant accepted that he was aware that Slice was not the appropriate forum to raise concerns. Taking into account these points, and the case of ***Bolton School v Evans***, the Tribunal accordingly concluded that it was the claimant's conduct, in breaching the Community Code, rather than the comments added to the initial post about the design being offensive, which led to the issuing of the Letter of Concern, as well as other genuine concerns which had arisen around that time, as detailed in the letter. Given these findings, the claimant's complaint that he was issued with the letter of concern because he made a protected disclosure, or did a protected act, does not succeed.

- 94.2. **Michael Tortolano's conduct and comments towards the claimant on 8 April 2025, as documented in his WhatsApp message and coauthored witness report of the same date.** The Tribunal's findings in relation to this are contained in paragraphs 25 and 26. The Tribunal accepted that this occurred and amounted to a detriment. The only established protected disclosure prior to 8 April 2025 occurred on 26 February 2025, as set out in paragraph 92.6 above. There was, however, no evidence before the Tribunal which indicated that MT's conduct or comments were influenced, in any way, by the established protected disclosure, or that he was even aware of this. The claimant did not assert this in evidence. Rather, he stated that the incident occurred because the restaurant was busy and staff were struggling to keep up with customer demands. The Tribunal accepted this was the case. The claimant's complaint, that MT's conduct or comments towards him were because he had made a protected disclosure, does not therefore succeed.
- 94.3. **Failure to address the claimant's harassment grievance in a fair or timely manner.** To the extent that this complaint relates to the claimant's initial complaint regarding the events of 8 April 2025, the Tribunal accepted that there was a 6 week delay in commencing the investigation, as the investigation in relation to that did not commence until 20 May 2025. The Tribunal accepted that this was an unreasonable period and that that amounted to a detriment. There was, however, no evidence before the Tribunal which indicated that delay was, in any way, influenced by any of the established protected disclosures/acts, namely the comments regarding the merchandise resembling swastikas and being offensive, or his witness report of 8 April 2025. Rather, the reasons for the delay in starting the investigation were as set out in paragraph 28. The claimant's complaints that the delay amounted to

victimisation and/or a detriment as a result of him making protected disclosure accordingly do not succeed. The Tribunal did not accept that the respondent failed to address the claimant's harassment grievance in a fair manner. Whilst the investigation was delayed, it was then conducted fairly with numerous witnesses being interviewed, an investigation report being prepared, and MT being invited to a disciplinary hearing where the allegations were upheld, and it was found his conduct amounted to gross misconduct. As the claimant has not established the detriment asserted, that element of the complaint cannot succeed. To the extent that this complaint relates to the Grievance, submitted on 24 May 2025 (see paragraph 37), the Tribunal did not accept that the respondent failed to address that in a fair or timely manner: they responded on 28 May 2025, indicating that, as the concerns raised related to the disciplinary investigation, they should be addressed in that process. The Tribunal did not agree that it was a detriment for the respondent to state this. It was open to the claimant to raise the concerns he articulated in his correspondence of 24 May 2025 in the disciplinary investigation meetings, at any disciplinary hearing and, thereafter, at any appeal hearing. The fact that the claimant was directed to do so was not something about which a reasonable person would complain. Even if the Tribunal is wrong on that, the Tribunal conclude that the reason the respondent did not separately address the Grievance is because they had directed the claimant to raise the issues stated in the Grievance in the disciplinary process. Their failure to take any further steps regarding the Grievance was related to that alone and was not influenced, in any way, by the established protected acts or protected disclosures which occurred prior to that date. The claimant's complaints that this amounted to victimisation, and/or a detriment as a result of him making protected disclosures, accordingly do not succeed.

- 94.4. **Failure to address the health and safety disclosures raised by the claimant and thereby continuing to jeopardise the claimant, employee's and the public's health and safety.** The Tribunal did not accept that the respondent failed to address the health and safety disclosures raised by the claimant. He first raised these issues on or after 20 May 2025. LD was appointed to consider those disclosures and held a meeting with the claimant on 4 June 2025. He subsequently investigated the health and safety concerns raised by the claimant, and provided a report on 25 June 2025, detailing his findings. As the asserted detriment has not been established, the claimant's complaint that he was subjected to a detriment as a result of making protected disclosures in relation to this does not succeed.

- 94.5. **The retaliatory commencement of a conduct investigation on 20 May 2025 which was unfairly delayed as per the ACAS codes of Practice.** The Tribunal accepted that the respondent commenced a conduct investigation in relation to the claimant, and that this amounted to a detriment. The Tribunal did not however accept that the respondent's decision to do so was materially influenced by any protected disclosure or protected act. They did so solely because they understood that there had been an altercation between two waiters, in the Restaurant and potentially overheard by customers, and wanted to establish the facts surrounding that, to determine if further action was required. The Tribunal's conclusions regarding the delay in commencing the investigation are set out in paragraph 94.3 above. The Tribunal noted that the investigation was commenced in relation to both waiters involved, not just the claimant. It was instigated in relation to both on the same date. There was no suggestion that MT had made any protected disclosures/acts, undermining the claimant's assertion that the investigation was instigated, or delayed, because of protected disclosures/acts made by him. The claimant's complaint that this amounted to victimisation, and/or a detriment as a result of him making protected disclosures, accordingly does not succeed.
- 94.6. **The procedure adopted for that investigation, which was comparatively unfair and procedurally unfair under the ACAS codes of practice.** The claimant principally relied upon the fact that he was not given notice of investigation meetings, that investigation meetings with him were longer and more questions were asked, when compared with MT, and that the statement which he gave to SM on 8 April 2025 was not taken into account in the investigation. In relation to the first point, the Tribunal did not accept that this was a detriment. It was not something about which a reasonable person would complain, as there is no requirement to give notice of investigation meetings. In relation to the remaining points, these were established and the Tribunal concluded that they amounted to detriments. In relation to these points, the Tribunal concluded that the claimant was asked more questions because there were more allegations against him and he did not accept the allegations put to him, as MT had done. The claimant's statement, as recorded by SM on 8 April 2025, was not taken into account as neither the claimant, nor SM, informed SH of this, so she did not know it existed. Even when the investigation report was provided to the claimant, and it was clear to him that the statement did not form part of the evidence relied upon, he did not raise that with JB at, or in advance of, the disciplinary hearing, or forward a copy to her. There was no evidence before the Tribunal which indicated that the claimant being asked more questions than MT, or that the statement not being taken

into account, were materially influenced by any protected disclosure or protected act. The claimant's complaints that this amounted to victimisation, and/or a detriment as a result of him making protected disclosures, accordingly do not succeed.

- 94.7. **Forcing the claimant to work a 10-hour shift, without a break, on 1 June 2025.** The Tribunal accepted that this occurred and that this amounted to a detriment. There was, however, no evidence before the Tribunal which indicated that the claimant not being afforded the opportunity to take a break during his shift on 1 June 2025 was influenced, in any way, by any of the established protected disclosures: the claimant did not assert this in evidence and he did not put this to the respondent's witnesses. Rather, he stated that he was the only waiter on shift and he could not take a break due to understaffing. The Tribunal concluded that it occurred as a result of insufficient staff being available on that particular shift. That is however different to it being as a result of the claimant making complaints about the respondent understaffing the Restaurant, or as a result of other protected disclosures made, which the Tribunal would require to be satisfied of to uphold this complaint. The claimant's complaint required to work a 10 hour shift without a break because he had made protected disclosures does not, accordingly, succeed.
- 94.8. **His suspension, on 2 June 2025.** The Tribunal accepted that this occurred and that this amounted to a detriment. There was, however, no evidence before the Tribunal which indicated that the claimant's suspension was influenced, in any way, by any of the established protected acts or disclosures: it was a direct response to the allegation that he had accessed the Restaurant's emails and forwarded confidential information to his personal email address. The Tribunal accepted that this was the sole reason for the claimant's suspension. The claimant's complaint that this amounted to victimisation, and/or a detriment as a result of him making protected disclosures, accordingly does not succeed.
- 94.9. **The unnecessary delay in concluding the conduct investigation.** The Tribunal did not accept that there was an unnecessary delay in concluding the conduct investigation. It started on Tuesday 20 May 2025 and concluded on Friday 6 June 2025. A period of 2.5 weeks to conduct an investigation, type up notes of meetings with 8 individuals (some of whom had more than one meeting), gather other relevant evidence and compile 2 separate investigation reports (one in respect of the claimant and one in respect of MT), is not unreasonable and does not constitute an 'unnecessary delay'. As the asserted detriment has not been

established, the claimant's complaint that he was subjected to victimisation, or a detriment as a result of making protected disclosures, in relation to this does not succeed.

Dismissal – Protected Disclosures & Victimisation

95. The Tribunal then considered whether the claimant had established, on the balance of probabilities, that the reason (or principal reason if more than one) was that he made one or more protected disclosures (s103A ERA).
96. In considering this, the Tribunal was mindful that the principal reason is the reason that operated on the employer's mind at the time of the dismissal (***Abernethy v Mott, Hay and Anderson*** 1974 ICR 323, CA) and that, if the fact that the employee made a protected disclosure influenced, but was not the sole or principal reason for dismissal, then the employee's claim under s103A ERA will not be made out (***Fecitt and ors v NHS Manchester (Public Concern at Work intervening)***).
97. The Tribunal accepted that JB considered each of the allegations against the claimant and found, for the reasons set out in paragraph 61 above, that these were established. The Tribunal accepted that the sole reason that JB determined that the claimant should be dismissed was his conduct. The fact that the claimant made protected disclosures did not influence that decision. In reaching this conclusion the Tribunal took into account the following:
 - 97.1. In relation to Allegation 1, it is clear that JB considered that the claimant had been provoked and had made complaints about MT's conduct, but still concluded that his actions in the face of provocation, were not acceptable. She concluded that he ought to have removed himself from the situation, which he did not. She found that his conduct, notwithstanding the circumstances, was not acceptable, and that customers left as a result of the altercation. Her findings accordingly solely related to the claimant's conduct, not any protected disclosures/acts.
 - 97.2. In relation to Allegation 2, it is clear that the allegation would likely not have been investigated had EB not informed SH of it when she attended the Restaurant on 20 May 2025. The claimant himself suggested, early in his employment, that EB did not like him and singled him out for unfair treatment. This was well before any established protected acts or protected disclosures, so the dislike cannot have been motivated or influenced by those. Regardless of EB's motivation however, SH investigated the allegations to see whether they had substance. She contacted and interviewed the people who were alleged to have been present during the alleged incident, namely the claimant, JD and LG,

and included details of what each stated in her investigation report. While JD, in his evidence to the Tribunal, had very limited recall of dates, he did confirm, and the Tribunal accepted, that he had provided the statement attributed to him, which was appended to the Investigation Report. This accorded with SH's evidence. The Tribunal accordingly did not accept, as asserted by the claimant, that the statement was fabricated by the respondent. Further, it was not put to JD in cross examination that the statement was inaccurate, or that he had provided an inaccurate statement because the claimant had made protected disclosures or protected acts. At the time of the disciplinary hearing, the claimant's position was that the evidence of JD and LG should not be accepted as they were drug users, so their evidence was not credible. No other reason was asserted by the claimant. This was investigated and it was found that there was no evidence to support that. While the claimant denied the allegation, JB accepted the evidence of the two witnesses in those circumstances (both of whom were peers of the claimant), finding that, on balance, the comment had been made. In doing so, she expressly considered whether they were making up the allegation, but concluded that they were not. Her findings accordingly related solely to the claimant's conduct. There is no basis upon which it could be concluded that this was influenced, in any way, by any protected acts/disclosure.

- 97.3. In relation to Allegation 3, the claimant's position was that, because, after he was suspended in response to this allegation, he made a protected disclosure relying on the email which was forwarded from the Restaurant's email to his personal email address (see paragraph 51), the respondent cannot rely on Allegation 3 as a basis for his dismissal. Whilst he denied sending the email to himself, he stated that if he had accessed the emails, to find information to rely on when making a protected disclosure, that act was also protected, given clause 14 of his contract of employment (see paragraph 14 above). The Tribunal did not accept that. Clause 14 indicates that employees shall not use or disclose confidential information, other than as authorised, required by law, in the course of duties or when making a protected disclosure. It does not authorise employees to access confidential and sensitive business data to seek out information. JB determined the evidence demonstrated that the claimant had purposely accessed confidential and sensitive business data and sent this to himself, without authorisation. He was disciplined for that act. The fact that, 2 days later, the claimant used that email to make a protected disclosure does not negate the initial established misconduct. As determined in the case of ***Bolton School v Evans*** (which has similar facts to this case), an

employee may be fairly disciplined or dismissed for misconduct, even where that misconduct is closely connected to a protected disclosure.

98. The claimant asserted that the reasons for his dismissal were invented, and that that real reason for his dismissal, which was shielded from JB, was his protected disclosures. He asserted that his protected acts and disclosures were concealed from SH and JB. This was not however the case. Both were aware that the claimant asserted that he had made protected disclosures and protected acts. Both were aware, broadly, of the nature of these (as the claimant informed them), but not the precise detail. Both were aware that these were being investigated separately. Both came to their decisions independently, based on the evidence before them. Neither was manipulated into reaching the decisions they did. While the claimant states that the allegations were invented, this was expressly considered by JB, but discounted for the reasons stated.
99. For these reasons the Tribunal concluded that the claimant's complaint under section 103A ERA does not succeed and is dismissed.
100. The Tribunal also concluded that the claimant's dismissal was not an act of victimisation. While it was clearly a detriment, the established protected acts did not influence, significantly or otherwise, the decision to dismiss him. As indicated above, the Tribunal was satisfied that he was dismissed solely because of the established misconduct.

Remedy

101. The only complaint which succeeds is therefore the complaint of harassment related to race, as set out in paragraph 90 above.
102. No financial losses flow from the established act of harassment.
103. The Tribunal's findings in relation to how the claimant felt during and following the incident on 8 April 2025 are set out in paragraph 26. While the claimant remained working and did not require to take time off, or seek any medical assistance or intervention, it was clear that, after the incident, he remained upset and angry, repeatedly asking why an investigation in relation to the incident had not yet commenced. While that claimant did give further evidence in relation to injury to feelings, that related to complaints which have not succeeded, such as in relation to the disciplinary process.

104. In these circumstances, and taking into account the helpful summary of the law and guidance provided by the EAT in ***Eddie Stobart Ltd v Graham*** [2025] EAT 14, the Tribunal considered that an award in the middle of the lower Vento band was appropriate, namely **£5,000**. Interest of **£469.04** from 8 April 2025 to date (428 days @ 8%) is also payable.

Date sent to parties: 10 June 2026

Schedule to Judgment**List of Issues**

Harassment – s26(1) EqA**1.1. Did the respondent engage in the following conduct:**

1.1.1. Michael Tortolano's conduct and comments towards the claimant on 8 April 2025, as documented in his WhatsApp message and coauthored witness report of the same date.

1.2. If so, was it unwanted conduct?**1.3. If so, was it related to race?****1.4. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?****Qualifying Disclosure – s43B ERA****2.1. Did the claimant make one or more qualifying disclosures, as defined in section 43B ERA? The claimant says he made the following disclosures to the respondent:**

2.1.1. In a WhatsApp message to management dated 14 December 2024, related to unfair treatment and bullying by a senior member of staff, Evan Baranowski;

2.1.2. In a WhatsApp message to management dated 30 December 2024, related to breach of financial obligations, unfair treatment and bullying by a senior member of staff Evan Baranowski;

2.1.3. In a WhatsApp message to management dated 2 January 2025, related to breach of financial obligations, unfair treatment and bullying by a senior member of staff Evan Baranowski;

2.1.4. Claimant made a verbal protected disclosure to General Manager Beth McFarlane mid-shift by the drinks bar, on 14 February 2025. The claimant vividly recalls stating "We should be serving ice with a scoop or tongs instead of a cup. Waiter's hands are filthy and are touching dirty plates, glasses and chemicals, and then touching the ice. It's a huge cross contamination and allergy risk. This is super basic; I've never seen this in all my years working in UK hospitality."

Beth McFarlane just shrugged her shoulders and said “that’s how we always do it.”

- 2.1.5. In a WhatsApp message to management dated 19 February 2025, regarding workplace difficulties and poor reviews from the public as a result of being severely understaffed;
- 2.1.6. On 26 February 2025, via the respondent’s social media platform regarding racist symbolism reminiscent of a “Nazi swastika” being incorporated into new company merchandise;
- 2.1.7. Claimant made a verbal Protected disclosure to Manager Beth McFarlane mid-shift in her office on approximately 3 April 2025. The Claimant told Beth “We shouldn’t be this understaffed every single shift. We really need an extra waiter and a KP on busy weekend and kids’ holiday shifts. We don’t have any clean plates or clean cutlery, and waiters don’t have time to do dishes properly. The food prep areas in the back are filled with dirty dishes, drinks prep counters are filthy, and everyone is under stress. Mike won’t even go to his section and his tables are upset. He told me he won’t serve the “fat black bitch at table 36” or the “Junkie Bitch at table 32” and that I need to do it or they won’t be getting any service. I am taking care of his tables, doing the KP work and taking care of my own section. It’s just too much. I’m not sure what’s wrong with Mike, maybe he is having an off day.” Beth McFarlane just shrugged her shoulders and said “what do you want me to do about it.”
- 2.1.8. On 8 April 2025, in a WhatsApp message to management and in a co-authored witness report, regarding understaffing and confidentiality breaches by management creating a hostile work environment resulting in a co-worker, Mike Tortolano, initiating an aggressive discriminatory hate speech attack against the claimant relating to his nationality because of his inability to properly perform duties due to the understaffing;
- 2.1.9. Claimant made verbal protected disclosure to Deputy General manager Sam Mitchell mid-shift by the drinks bar on approximately 21 April, after a conversation where Sam told the claimant that Mike had not yet been investigated for the discriminatory hate speech attack on 8 April 2025. The claimant asked “Why hasn’t Mike been investigated for his hate speech attack on me? Surely the company should have started an investigation by now. It’s been 2 weeks already.” Sam just shrugged his shoulders and said “I’m not sure.”

- 2.1.10. Claimant made verbal protected disclosure to General Manager Beth McFarlane at the end of his shift in her office on approximately 11 May 2025. The claimant said "Is there any reason why Mike has not been investigated for his hate speech attack on me yet? And it seems unfair that Mike gets to work every Saturday to get all the tips and I never get to work on Saturday anymore." Beth replied by saying "I will see what I can do about getting you a Saturday shift."
- 2.1.11. Claimant made verbal protected disclosure to General Manager Beth McFarlane mid-shift by the dessert bar on approximately 18 May 2025. The claimant said "I don't understand why the company still won't pay for a KP when we are so busy and it causes so many problems. It's the same issue every single shift. Sam told me our restaurant's net profit was 65,000 pounds last month, but the company refuses to pay an extra 120 pounds to have a KP on weekends so we can have a reasonable and tenable work environment? It's just crazy and greedy and at the expense of our mental and physical health." Beth replied by just shrugging her shoulders.
- 2.1.12. *At an investigation meeting held on 20 May 2025, as recorded in annotated meeting notes sent by the claimant to Stephanie Hunter on 24 May 2025;***
- 2.1.13. *In emails sent to management on 21 May 2025, regarding the respondent's failure to address any of the claimant's protected disclosures, the false allegations that had been raised against him, and the numerous procedurally unfair issues with the unfair investigation meeting that was held the day before;***
- 2.1.14. *In his grievance dated 24 May 2025, regarding the respondent's failure to address any of the claimant's protected disclosures regarding health and safety and his concerns with the unfair nature of the respondent's unfounded investigation it constituting a retaliatory response to his protected disclosures;***
- 2.1.15. *In emails sent to head office and management on 26 May 2025, where he documented his protected disclosures with video evidence from a shift worked the day before, exposing continued chronic understaffing, no KP, not enough waiters, filthy food and drink preparation areas, ice contamination, an untenable work environment and other health and safety violations;***

- 2.1.16. In an email sent to head office on 29 May 2025, with documented evidence of protected disclosures previously made to management on 19/02 and 08/04, as well as the 3 public visit reports from February all demonstrating chronic understaffing leading to a harmful, hostile, unsafe and unhealthy working environment;**
- 2.1.17. In a further email sent to head office on 29 May 2025, in which the claimant stated that he no longer felt safe attending work due to repeated unaddressed health and safety breaches, harassment, and victimisation;**
- 2.1.18. In an email sent to head office on 31 May 2025, with video evidence from a shift the day before, showing continued repeated ice contamination on every shift despite previous protected disclosures;**
- 2.1.19. In an email sent to head office on 1 June 2025, with photographic evidence from the same day;**
- 2.1.20. In an email sent to head office on 2 June 2025, regarding an instruction to understaff the restaurant below the minimum operational limit as a “non-negotiable” during a busy kid school holiday period, and that his suspension constituted further victimisation and whistleblowing detriment;**
- 2.1.21. At an investigation meeting held on 4 June 2025, as recorded in annotated meeting notes sent by the claimant to Lewis Draper on 5 June 2025;**
- 2.1.22. In a meeting held with Stephanie Hunter on 5 June 2025, as recorded in annotated meeting notes sent by the claimant her later that day;**
- 2.1.23. In an email to head office and both investigating managers on 5 June 2025 regarding drug use by three employees, who often came to work under heavy influence of illicit drugs; and**
- 2.1.24. At a disciplinary meeting held on 16 June 2025, as recorded in annotated meeting notes sent by the claimant to Jackie Beveridge on 17 June 2025.**
- 2.2. In relation to each asserted disclosure, the Tribunal will decide:**

 - 2.2.1. Did the claimant disclose information?**

- 2.2.2. Did the claimant believe the disclosure of information was made in the public interest?
- 2.2.3. Was that belief reasonable?
- 2.2.4. Did the claimant believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?
- 2.2.5. Was that belief reasonable?
- 2.3. If the claimant made a qualifying disclosure, was it also a protected disclosure (s43C ERA)?

Detriment – s47B ERA

- 3.1. Did the claimant suffer a detriment on the ground that he has made a protected disclosure? The detriments relied upon by the claimant are as follows:
 - 3.1.1. Michael Tortolano's conduct and comments towards the claimant on 8 April 2025, as documented in his WhatsApp message and coauthored witness report of the same date.
 - 3.1.2. Failure to address the claimant's harassment grievance in a fair or timely manner. Causing the claimant to feel extended alienation, emotionally distress and anxiety at the workplace because his grievances were completely ignored.
 - 3.1.3. Failure to address the health and safety disclosures raised by the claimant and thereby continuing to jeopardise the claimant, employee's and the public's health and safety
 - 3.1.4. The retaliatory commencement of a conduct investigation on 20 May 2025 which was unfairly delayed as per the ACAS codes of Practice.
 - 3.1.5. The procedure adopted for that investigation, which was comparatively unfair and procedurally unfair under the ACAS codes of practice, causing extended emotional distress and anxiety.
 - 3.1.6. Forcing the claimant to work a 10-hour shift, without a break, on 1 June 2025, causing prolonged physical stress and anxiety.
 - 3.1.7. His suspension, on 2 June 2025.
 - 3.1.8. The unnecessary delay in concluding the conduct investigation, causing additional extended emotional distress and anxiety.

3.1.9 Issuing a letter of concern to the claimant on 13 March 2025.

4. Unfair dismissal – s103A ERA

- 4.1. Was the sole or principal reason for the claimant's dismissal the fact the claimant made a protected disclosure(s)?

Victimisation – s27 EqA

- 5.1. *Did the claimant do a protected act? The claimant relies upon his complaints made on 8 April 2025, 21 April 2025 and 11 May 2025, regarding the conduct of Michael Tortolano towards him on those dates, as well as the complaint referenced at section 2.1.6.*
- 5.2. Was the claimant subjected to the following detriments?
- 5.2.1. The asserted detriments listed in sections 3.1.2, 3.1.4, 3.1.5, 3.1.7, 3.1.8 and 3.1.9; and
- 5.2.2. Being dismissed.
- 5.3. If so, did the respondent subject the claimant to those detriments because of the protected act?

Remedy

- 6.1. If the claimant establishes any of their complaints, to what remedy are they entitled? Specifically:
- 6.1.1. What basic and/or compensatory award is payable to the claimant, if any?
- 6.1.2. What financial losses has the detriment/discrimination caused the claimant?
- 6.1.3. What injury to feelings has the detriment/discrimination caused the claimant and how much compensation should be awarded for that?
- 6.1.4. Is it appropriate to adjust any award due to unreasonable failure to follow the Acas Code?