



EMPLOYMENT TRIBUNALS

Claimants: Ms McGahan Norton
Mr P Gradwell

Respondent: Manchester and Irish Trading Limited

HELD AT: Manchester

ON: 19, 20 & 21 June 2017
11& 12 September
2017
13 September 2017
(In Chambers)

BEFORE: Employment Judge K M Ross
Mr J Flynn
Dr H Vahramian

REPRESENTATION:

Claimants: Ms K S Tootell (Mother of Ms McGahan Norton)
Respondent: Ms Lloyd, counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:-

Ms McGahan Norton:

1. Ms McGahan Norton's claim that she was automatically unfairly dismissed for making protected disclosures is not well founded and fails.
2. Ms McGahan Norton's claim that she suffered a detriment on the ground she made public interest disclosures when the respondent sent a reference to her new employer is not well founded and fails .

3. Ms McGahan Norton's claim for unlawful deduction from wages is not well founded and fails.

Mr Gradwell

1. Mr Gradwell's claim that he was automatically unfairly dismissed for making protected disclosures is not well founded and fails

2. Mr Gradwell's claim that he suffered detriments when:-

- (i) in November 2015 Jill Gourley extended his probationary period;
- (ii) he was not given a pay increase in October and not given pay for doing the Duty Manager role;
- (iii) on 21 December Jill Gourley failed to provide cover for the claimant and gave him an ultimatum to work excessive hours without rest days or receive a P45

on the ground he made public interest disclosures is not well founded and fails.

3. Mr Gradwell's claim for breach of contract when the respondent failed to increase his rate of pay is not well founded and fails

4. Mr Gradwell's claim that there was an unlawful deduction from his wages because he was not paid £3,248 for hours worked in excess of 37.5 hours per week from the start of his employment is not well founded and fails

REASONS

Ms McGahan Norton

1. The claimant's claims are for automatic unfair dismissal because of protected disclosures and a claim for public interest disclosure detriment. The detriment is that the respondent sent negative reference dated 3 March 2016 to the claimant's current employer. The claimant also brought a claim for unlawful deduction from wages. At the outset of the hearing the wages claim was clarified as the sum of £982 for weekend working and overtime since the start of her employment until her dismissal. On day 2 of the hearing the claimant provided a schedule for a slightly higher sum.

2. The issues in Ms McGahan Norton's case were clarified in a case management hearing before Employment Judge Sherratt on 23 September 2016 and sent to the parties on 29 September 2016, see page 49 to 51 of the bundle. The claimant had previously attended a Preliminary Hearing on 28 July 2016 before Employment Judge Porter and the Order was sent to the parties on 9 August 2016. (See page 32 to 36). Judge Porter required the claimant to clarify her public interest disclosure claim. The claimant did this by email to the Tribunal dated 25 August 2016 which is in the bundle at p37 to 40. Accordingly the issues for the Tribunal in Ms McGahan Norton's case were as follows.

Issues

- (i) Section 103A ERA 1996 unfair dismissal.

Was the reason (or principal reason) for the claimant's dismissal was because she made protected disclosures?
- (ii) The legal issues :
 - (1) did the claimant make a protected disclosure(s). In particular:
 - (a) did the claimant make a disclosure of "information"
 - (b) did the claimant have a reasonable belief that the disclosures tended to show at least one of the six "relevant failures" set out in Section 43 B (1)(a) to (f) Employment Rights Act 1996 e.g. that a person has failed, is failing or is likely to fail to comply with any legal obligation which is subject or that the health and safety of any individual has been, was being or was likely to be endangered.
 - (c) did the claimant have a reasonable belief that the disclosures were made in the public interest.
 - (d) were the disclosures made to the employer as alleged.
- (iii) Protected Disclosure Detriment claim
 - (1) Did the claimant make protected disclosures? (As defined above)
 - (2) Did the claimant suffer detrimental treatment from the respondents when they sent an unfavourable reference to her present employer?
 - (3) If so has the respondent proved that the claimant was not subjected to the detriment on the ground that she had made the protected disclosures?

- (iv) Unlawful deduction from wages

Has the claimant received less than the sums properly payable?

Mr Gradwell

3. Mr Gradwell brings claims for automatically unfair dismissal for making protected disclosures, public interest disclosure detriment claims, a claim for breach of contract and a claim for unlawful deduction from wages/breach of contract.

4. Case Management Orders were made and issues identified at a hearing before Employment Judge Slater on 16 January 2017. This document does not appear in the bundle but was copied for the parties at the outset of the hearing.

5. Both cases were combined and the case was listed for hearing.

6. There were a number of procedural problems for the Tribunal in hearing this case. Firstly Case Management Orders had not been complied with and both parties had produced a bundle. Regrettably the Tribunal therefore had to work both with a main bundle (in a lever arch file) numbering pages 1 to 367 and a smaller bundle produced by the claimants numbered 1 to 158. Unless otherwise stated in this judgment the page references are to the lever arch bundle produced by the respondent.

7. At the outset of the hearing in June it became clear that copies of all the claimants' witness statements were not available to the Tribunal. The witness statement of the claimant, Ms McGahan Norton, and the claimant's witness Sammy Jo Boylan were emailed to the Tribunal on the morning of 19 June 2017. The Tribunal agreed to regard the document at pages 64-74 of the bundle as the statement for claimant Mr Gradwell.

8. During the course of the hearing in June it became apparent the version of the respondent's witness statement for Ms Lucas provided to the claimants was not the same as the version provided to the Tribunal and the respondent's counsel. The Tribunal dealt with this issue by arranging for copies of the version of Ms Lucas's statement provided to the Tribunal to be given to the claimants and time was given to them to check for any differences. Time was also given to re-phrase questions. The claimants were given the opportunity to stop the hearing and restart with a new panel but did not wish to do this.

9. At the end of the original three days set for this hearing on 21 June 2017 the claimants confirmed that they wished Ms McGahan Norton to be called as a witness

for Mr Gradwell. The claimant's representative indicated that she had already disclosed such a statement to the respondent. It was agreed the claimant would provide a copy of that statement to the Tribunal. After the hearing in June, the claimant's representative sent in a statement by email. The statement attached was the same statement as the claimant had provided for her own case, it was not an additional statement.

10. When this issue came to light at the resumed hearing on Tuesday 12 September the claimants' representative Ms Tootell explained that she had failed to send a copy of Ms McGahan's witness statement as a witness in Mr Gradwell's case either to the respondents at the time statements were exchanged or to the Tribunal on 21 June. Neither did she have a copy of that statement. The Tribunal gave Ms Tootell time to see if she could locate the statement. She was unable to do so. Accordingly it was not possible for the Tribunal to take that statement into account.

11. The instructing solicitors for the respondent had gone into liquidation by the time of the resumed hearing in September although Ms Lloyd (counsel) did attend.

12. The Tribunal heard from the respondents witnesses Ms Gourley, Ms Charlene Boylan, Councillor Murphy and Ms Lucas, at the hearing 19, 20, 21 June. (Mr Kennedy was unable to attend on day three because he was in Ireland at a wedding). We heard from the claimant's witnesses Mr Anthony Gradwell (brother of Mr Gradwell the claimant), Mr Hancock and Mr Sheffield. It was agreed Ms Ebony Norton (age 15), Ms McGahan's Norton's daughter would not be called, as neither the panel nor the respondent had any questions for her. The panel agreed we would attach such weight as we thought fit to her statement.

13. Sammi Jo Boylan produced a witness statement on behalf of the claimant but informed the respondent that it was not her statement and she did not wish to have it taken into account. She did not attend and accordingly that statement was disregarded.

14. At the resumed hearing in September the Tribunal heard from both claimants and from Mr Kennedy, the respondent's final witness.

Facts

15. We found the following facts.

16. Mr Gradwell was employed by the respondent as a Chef from 27 April 2015 until his employment ended on 21 December 2015. There is a dispute about precisely what occurred when his employment came to an end.

17. The Tribunal finds that Manchester and Irish Trading Limited trading as Irish World Heritage Centre exists to advance the education of the wider community on all aspects of Irish culture and heritage and the positive contribution of Irish Immigrants

worldwide through working with local community groups. We find based on Ms Gourley's evidence that prior to her joining the centre, it had operated with a kitchen and a cook supplemented by bar staff. It had recently failed an Environmental Health inspection for the kitchen and one of her first tasks was to raise standards within the kitchen. We find that as part of carrying out this task she recruited Peter Gradwell a talented Chef with whom she had worked before. We find she recruited him as part of the work that she carried out to improve the centre's environmental health rating. It is not disputed that when the Environmental Health Officer carried out a re-inspection of the centre in May 2015 it went well and the achievement of a 5 star rating was noted. See page 117 to 120.

18. We find that Mr Gradwell's contract is at page 325 to 328 of the bundle. We find he was a salaried employee. His contract states at clause 7 "your normal hours of work are 37.5 hours per week, Monday to Friday although you will be expected to undertake duties outside normal working hours as and when required, for which overtime will not be payable".

19. There is no dispute that when he started working at the centre the claimant was paid a salary of £23,000 per annum, see paragraph 6 i, page 326. His contract states "basic salary will be reviewed in twelve months with a view to an increase of up to £25,000 subject to maintenance of level 5 Hygiene standard and an increase in food profits". We find this clause is not relevant because the claimant did not work for the respondent for twelve months.

20. The contract also states that the claimant was subject to a six month probationary period, see page 325. The statement of employment particulars was signed by the claimant and the respondent (see page 328).

21. We find in emails of 16 March 2015 (see page 106) and 19 March 2015 Ms Gourley stated "I would be happy to look at an increase to £24,000 on satisfactory completion of a six month probation" and at page 107 "we are prepared to review this to £24,000 on satisfactory completion of your six month probation".

22. The claimant's six month probationary period was due to come to an end at the end of October.

23. The claimant was given a letter extending his probationary period on 16 November 2015. There is no dispute that he did not receive an increase in pay. The reasons given for the extension of his probationary period are regarding his ability to manage the kitchen as set out in the letter dated 16 November 2015.(p171). The claimant said he was given this letter on 22 November. We accept the claimant's recollection and find it is consistent with emails at page 173.

24. We find that Ms Gourley introduced a Duty Manager system. We find that as a member of the senior management team Mr Gradwell along with the Marketing Manager and Bar Manager was required as part of his employment to assume responsibility in Ms Gourley's absence as Duty Manager. We find the Duty Manager

Protocol is at page 133 to 134 of the bundle and the claimant's acceptance of the Duty Manager protocol is at page 132.

25. It is the claimant's case that he was to be paid a further £1,000 for taking on the responsibility of Duty Manager. Ms Gourley denied that. The Tribunal is not satisfied there was evidence to suggest that Ms Gourley offered Mr Gradwell a £1,000 to be Duty Manager. We find being Duty Manager meant being responsible for opening and closing the centre on some of the days he was on duty. We prefer Ms Gourley's evidence. We find there was no promise of an additional £1,000 for this task.

26. We find that around the time the claimant accepted employment with the respondent he informed Ms Gourley that he wanted a Blast Chiller for the kitchen (page 108). We find Ms Gourley looked at the cost which was likely to be between £1,000 and £2,000 and her understanding was that whilst a Blast Chiller would make catering for large events easier it was not something that was an absolute essential for the kitchen. We find at that time the centre was not profitable and she had to prioritise what was needed. We find she told the claimant that she could ask for a Blast Chiller in the longer term, along with the plans for extending the kitchen and we find that the claimant seemed content with that.

27. We find that as part of her role Ms Gourley sought to introduce a more structured system in relation to staffing. We find that a number of staff were allocated to assist in the kitchen including Charlene Boylan and Angela Mullaney who had achieved Level 2 award in Food Safety in Catering. We find that Ms Gourley offered Charlene Boylan to be fully trained as Mr Gradwell's assistant but we find but it he refused because he wanted to have a fully trained professional Chef to assist him. We find that a friend of Mr Brian Kennedy, a chef named Chris worked in the kitchen for a time to support Mr Gradwell.

28. We find there were tensions in the kitchen. We also find there were tensions between Mr Gradwell and Ms Gourley. We find Ms Gourley considered that Mr Gradwell was not taking responsibility for ordering stock or managing staff. She relied on an email exchange at 167 to 169 as illustrating how Mr Gradwell was not taking responsibility. We find she sought to encourage him. For Mr Gradwell we find he considered things were going well until he was told his probationary period was not being extended.

29. We find around the 10/11 November 2015 Nathaniel Dyer starting work as a Chef and was hired with Mr Gradwell's agreement.

30. We find there was a telephone conversation on Monday 16 November at 8.49 because there is a text message in the bundle, page 169 main bundle and 29D in the supplementary bundle where Ms Gourley says "Hi Pete I am sorry to bother you but can you call me when you have a minute regarding business this week and your days off thanks".

31. Although we find there was a text at page 169 inviting Mr Gradwell to telephone Ms Gourley neither Ms Gourley nor Mr Gradwell in their statements refer

to a telephone conversation on 16 November 2015. We find there was no evidence given in cross examination in relation to any such conversation.

32. At the stage Mr Gradwell was being cross examined he referred to some notes he had completed at page 38 and page 38A - C supplementary bundle. The matters identified in those notes had not been identified as protected disclosures; see notes of case management hearing .They are not referred to in Mr Gradwell's statement. These matters had not been put to the respondent's witnesses. The notes appear to relate to issues raised on 9 December 2015.

33. There is no dispute that on 10 December 2015 the Chef Nathaniel Dyer left the centre.

34. We find it was part of the claimant's responsibility to set rotas within the kitchen and part of that responsibility was that he was expected to make a request for additional staffing requirements.

35. We find there had been a meeting in October 2015 to plan a Christmas dinner at the centre. We rely on the evidence of Ms Gourley that numbers were potentially up to 150. We rely on the evidence of Ms Charlene Boylan that it was hoped that final numbers would be confirmed and paid for by the end of November. We rely on the evidence of Mr Gradwell that there was a late acceptance of further bookings.

36. We find that by December 2015 there were 104 bookings.

37. It is not disputed that the centre was very busy with additional functions in the run up to Christmas. We find that Ms Gourley had booked in catering for a funeral on Wednesday 23 December because at that stage the numbers for Christmas Day were considerably less than anticipated.

38. We find that on Sunday 20 December 2015 the claimant was on duty 8am to 6pm. We find that Ms Gourley was not due to attend until 5pm to 11 pm. We find the claimant sent her a text message complaining -see page 185 to 186. We found the previous day the claimant had informed Ms Gourley that he had had a big argument with his wife about the number of hours he was working and where he explained that he was not happy about the funeral booking for Wednesday 23 because he needed the kitchen for the Christmas dinner preparation.

39. We find that Mr Gradwell left early on 20 December although he was due to work until 6pm." I am going at 4!" See text at p185. We find this was due to a family celebration. We find that evening Ms Gourley contacted Ms Lucas, the Centre's volunteer HR professional trustee advisor to let her know she was concerned that the claimant was going to walk out, see page 188 to 189.

40. We find that according to the rota on page 44 the claimant was not due to work on Monday 21 December and Tuesday 22 December 2015. There is no dispute he was due to work on 23, 24 and 25 December.

41. We find that the claimant was requested to attend on the 21 December by Ms Gourley to discuss the matters. We rely on her evidence that she intended to inform him that she wanted to tell him her solution to his concern namely to hire agency staff to help from 22 December through the Christmas period.

42. We find that when Mr Gradwell arrived on the morning of 21 December he noticed that the board showed there were now an additional 4 people listed for Christmas dinner. We find this made him angry. We find he sent a text message to Charlene Boylan asking if she added the numbers- see page 187. She sent a text message in reply "yeh coz Gill told me to".

43. We rely on the evidence of Ms Boylan that the claimant was agitated at the increase in the numbers of Christmas dinners from 104 to 108. We rely on her evidence to find there was a conversation between Ms Boylan and Mr Gradwell about the increase in numbers for Christmas dinner. We rely on her evidence that he "hit the roof".

44. We find that there was then a conversation between Ms Gourley and Mr Gradwell. We find they were both shouting. We find relying on Mr Gradwell's own evidence that he informed Ms Gourley "I just can't do it. I will do the orders for you now but I'm going".

45. We find that the claimant was overwhelmed by the volume and the responsibility of the work. In reaching this finding we note that this was his first job with sole ongoing responsibility for a kitchen. We rely on his resignation letter which admitted it was a "massive learning curve." P191

46. We find Ms Gourley said "are you refusing to work knowing we have business booked in?". We find he told her "I'm leaving I can't cope with all this". We find that he picked up his knives (his own equipment) which indicated he intended to leave permanently.

47. We find Ms Gourley asked Laura McGahan Norton, the other claimant to join them as a witness. We are not satisfied that Ms Gourley said the words the claimant suggests she spoke in his statement. We find it is more likely and we prefer Ms Gourley's account that she asked the claimant to confirm his resignation in writing if he was really leaving. We find this is consistent with her evidence that the claimant had threatened to walk out on previous occasions. It is also consistent with her contemporaneous contact with Ms Lucas, expressing her concern that the claimant was going to leave before the Xmas dinner. It is not disputed Ms Gourley offered to meet the claimant later in the day at 2pm to discuss matters further but the claimant had a prior commitment and said he could not do so.

48. We find the claimant then left. We find later that day returned with a letter of resignation which is found at page 190 to 191 of the bundle.

49. We find that at the time he resigned the claimant felt under pressure. We find the kitchen was a pressurised environment as is common in the catering industry. We find that the Assistant Chef had left before Christmas and the claimant was also

under personal pressure from his wife about the number of hours he was working in addition to the pressure of being in a role where for the first time he was managing a kitchen by himself.

50. We find that the respondent accepted the claimant's resignation on 24 December 2015, see page 193. We find on 15 January the claimant contacted the respondent saying his decision to resign had been hasty and asking if the respondent would be willing to work with him again. The respondent declined explaining they were in the process of offering employment to another (see page 201 to 206).

51. In or around late January in an attachment sent by the other claimant, Laura McGahan Norton, Mr Gradwell presented a grievance, see page 194 to 198. The response of Ms Gourley to those allegations is at page 260 to 262.

Claim for public interest disclosure detriment and dismissal.

The Law

52. The relevant law in relation to a claim for protected disclosure dismissal and detriment is found at section 103A, section 43A, section 43B, section 43C and section 47B Employment Rights Act 1996.

53. So far as the burden of proof is concerned, we have had regard to section 48(2) ERA 1996 in relation to the detrimental treatment claim. We have also had regard to **Fecitt and others v. NHS Manchester** EAT [2011] IRLR 111. In relation to unfair dismissal, we had regard to **Kuzel v. Roche** [2008] IRLR 530.

54. It is relevant with regard to both the unfair dismissal and the detriment claim to consider whether the claimant has made a qualifying disclosure within the meaning of section 43B ERA 1996 and then whether each qualifying disclosure was protected within the meaning of sections 43C ERA 1996. Finally we must consider whether there is any casual link between the claimant's dismissal and/or the detriments relied upon by the claimant.

Issues.

55. We turn to the issues. They are set out in the case management note of Employment Judge Slater dated 20 January 2017.

56. The first issue is did the claimant make protected disclosures?

Disclosure One

57. We turn to the first protected disclosure relied upon by Mr Gradwell, which is listed at paragraph 10.1 of Judge Slater's note:

“On 16 November 2015 Mr Gradwell informing Gill Gourley in a telephone conversation that having office staff performing his duties (as a Chef) was a risk to the public.”

58. The first question is: was there a "disclosure of information" The only information the Tribunal was given in relation to this conversation was a text message from Ms Gourley to the claimant where she asked him on 16 November 2015 to ring her. See p169. There was no reference in Mr Gradwell's statement to a telephone conversation with Gill Gourley on 16 November 2015. Neither was there any reference in Ms Gourley's statement to the detail of such conversation. In these circumstances the Tribunal is not satisfied that there was a disclosure of information and accordingly it cannot amount to a protected disclosure within the meaning of the Employment Rights Act 1996.

Disclosure Two

59. “On 21 December 2015 Mr Gradwell informing Gill Gourley verbally that the respondent was not complying with legal requirements relating to the storage of food, food safety manuals were not being adhered to, hazard analysis control points (HACCP) was not being completed since staff were not trained to do so and office staff were not competent to provide food to the public. He also informed her that he had been promised time off in lieu which he had not been given and he was working excessive hours". This information is found at 10.2 of Judge Slater's note.

60. We turned to the first question; did the claimant make a disclosure of information? We find he did in relation to two matters.

61. We find that the discussion on 21 December 2015 between Mr Gradwell and Ms Gourley was primarily about the Christmas dinner. We find that he told Ms Gourley that “it was risky ordering all the supplies” because “it was going to be a struggle to adequately store it all at the correct temperatures” (see page 72).

62. We rely on Ms Gourley's evidence that Mr Gradwell did not refer to food safety manuals or to HACCP being completed. We are not satisfied there was any reference to staff not being trained and not competent to provide food to the public We rely on her evidence on this point and it is consistent with the claimant's evidence because there is no reference in his statement to staff not being trained and not competent to provide food to the public in this conversation

63. We find that the claimant did complain to Ms Gourley in this conversation that he was working excessive hours, we find he told her "Gill I've done over 100 hours in the last two weeks I am not working my days off again" (see page 72). We find no specific reference to TOIL in the claimant's statement and find it was not mentioned in the conversation on 21 December.

64. We are therefore satisfied the claimant made a disclosure of information relating to the storage of food: “it was going to be a struggle to adequately store it all at the correct temperatures.” We find he made a second disclosure of information

namely that he was working excessive hours "Gill I've done over 100 hours in the last two weeks I am not working my days off again".

65. We turned to the second issue. Did the claimant have a reasonable belief that the disclosures tended to show at least one of the six "relevant failures" set out in Section 43 B (1)(a) to (f) Employment Rights Act 1996 e.g. that a person has failed, is failing or is likely to fail to comply with any legal obligation which is subject or that the health and safety of any individual has been, was being or was likely to be endangered?

66. In relation to the claimant's complaint about storage of food on 21 December we are satisfied that in the reasonable belief of the claimant this disclosure tended to show breach of a legal obligation or that health and safety of an individual was likely to be endangered and we are satisfied that the claimant reasonably held that belief. We rely on the evidence that the claimant had previously discussed a blast chiller with the respondent and the evidence that the 5 star rating from Environmental Health was also important to the claimant to find he reasonably believed there was a potential breach of a legal obligation.

67. We turn to the next issue. Did the claimant have a reasonable belief that the disclosures were made in the public interest.

68. We are satisfied his disclosure in relation to the storage of food was in the public interest. We find the respondent was providing food at catering events to the public and a concern that food was not being stored safely was a matter of public interest.

69. We turned to the other part of the disclosure on 21 December 2015 in relation to working excessive hours. We are not satisfied that in the reasonable belief of the claimant that tended to show a breach of a legal obligation or that health and safety of an individual was likely to be endangered

70. We rely on our finding that the claimant worked in catering and we were informed and find that it was standard practice within the industry for salaried employees to take TOIL at a time when the kitchen was less busy. It was agreed that the run up to Christmas was a very busy period. Even on the claimant's own evidence if he worked 100 hours over two weeks that was 50 hours per week. This was consistent with Ms Gourley's evidence who said that the claimant had worked 52.5 hours that week.

71. We rely on Ms Gourley's evidence that the claimant was entitled to TOIL after Christmas, in January when it was anticipated the centre would be much quieter and that she informed him of this.

72. In this context we are not satisfied that any disclosure the claimant made in relation to his complaint that he was working excessive hours did in his reasonable belief genuinely amount to a breach of a legal obligation.

73. However if we are wrong about that and he can show the disclosure that he was working excessive hours was, in his reasonable belief, a breach of a legal obligation, we must consider whether it was in the public interest. We are not satisfied that that disclosure was made in the public interest because we find it was in the claimant's own personal interest. The conversation was in the context of his concern about the hours he was working in the context of his private life.

74. We turn to the next issue: were the disclosures made to the employer as alleged. There is no dispute that the disclosures which were made as we have found above were made to his line manager, Ms Gourley. Accordingly they were made to his employer.

Disclosure 3 and Disclosure 4

75. We turn to Disclosure three: "on 21 December 2015 Mr Gradwell writing to the Trustees making the same disclosures as he had made to Jill Gourley orally". This is at 10.3 of Employment Judge Slater's note.

76. Disclosure 4 is at 10.4 of EJ Slater's note: "On 30 December, Mr Gradwell making similar disclosures in writing to Teresa Grant in a written grievance, writing about the kitchen not being adequate for the numbers; food being stored at 12 degrees in the beer cellar, against regulations for the storage of food, since there was no extended kitchen where there could be extra fridges and the freezers did not work; untrained staff providing food to the public and HACCP not being complied with."

77. The first question is what is the disclosure of information?

78. The Tribunal paused at this point.

79. The Tribunal noted that the claimant relied on his dismissal which occurred on 21 December 2015 and 4 other detriments which were alleged to have occurred in November 2015, October 2015, and on the morning of 21 December 2015.

80. As a matter of commonsense and logic, if a claimant has been dismissed for making a protected disclosure, the disclosure must have occurred *before* the dismissal. In a claim for public interest disclosure detriment claim, the protected disclosure must have occurred *before* the detriments.

81. The third disclosure was contained in the claimant's resignation letter which he addressed to the Trustees. It was not until the afternoon of 21 December the claimant returned to the workplace to deliver his letter. See our fact finding above. The final detriment relied upon by the claimant occurred before this disclosure on the morning of 21 December 2015: "on 21 December 2015 Gill Gourley failed to provide cover for the claimant and gave him an ultimatum to work excessive hours without rest days or receive a P45".

82. The fourth disclosure which occurred on the 30 December 2015 also occurred after the last alleged detriment which took place on the morning of the 21 December 2015.

83. Likewise in relation to the automatically unfair dismissal claim there is no dispute that the claimant's letter of resignation (3rd disclosure) was provided after he had taken the decision to leave the respondent's employment on the morning of 21 December 2015.

84. We find the 3rd and 4th disclosures both occurred after the claimant's resigned and after the last detriment occurred. We find therefore they can not have caused his dismissal or caused any of his 4 detriments.

85. Therefore there is no need for the Tribunal to decide whether they amounted to disclosures of information and whether they were protected and qualifying within the meaning of the legislation because even if they were they can not have caused his dismissal or caused the detrimental treatment he relies upon.

86. The Tribunal turns to the next issue namely: did the claimant suffer detrimental treatment from the respondent as alleged? The Tribunal considered the detriments relied upon by the claimant.

87. The first detriment is the extension of the claimant's probationary period.

88. The Tribunal is satisfied that extending the claimant's probationary period is capable of amounting to a detriment.

89. The Tribunal turns to the second detriment "not being given a pay rise in October and pay for doing the Duty Manager role".

90. We find that the "not being given a pay rise in October" is linked to the extension of the claimant's probationary period. We rely on our fact finding that the claimant was only entitled to the respondent considering whether to award an increase in pay if he completed his probationary period. For the reasons stated above we are satisfied that not being given a pay rise in October is linked to the potential extension of the claimant's probationary period. Accordingly failure to give a pay rise could potentially be linked to the failure to extend his probationary period and could amount to a detriment.

91. We rely on our finding of fact that the claimant did not have any entitlement to pay for doing the Duty Manager role and accordingly we find that cannot amount to a detriment.

92. We turn to the third alleged detriment: "On December 21 2015 Gill Gourley failed to provide cover for the claimant and gave him an ultimatum to work excessive works without rest days or receive a P45".

93. The Tribunal relies on its findings of fact. The Tribunal has found that on 21 December Gill Gourley had asked the claimant to attend work to discuss a solution

to the issues between them. We rely on our finding of fact that on attendance at the work place the claimant saw that additional numbers had been added to the Christmas dinner and became angry.

94. We are not satisfied that Gill Gourley "gave him an ultimatum to work excessive hours without rest days or receive a P45". We rely on our finding of fact of the conversation which took place between Gill Gourley and Mr Gradwell which culminated in him resigning from the respondent. Accordingly because the summary stated is factually incorrect we are not satisfied it amounts to a detriment.

Causation

95. Having found that the claimant was subjected to detrimental treatment when the respond failed to extend his probationary period and not being considered for a pay increase which is linked to the failure to extend his probationary period, the Tribunal turned to the next issue which is causation.

96. Has the respondent proved the claimant was not subjected to a detriment on the ground he made a protected disclosure?

97. The Tribunal reminds ourselves that we have found one protected and qualifying disclosure namely the disclosure made to Gill Gourley concerning food storage on 21 December 2015.(see above)

98. When considering the causal connection the Tribunal notes that the detrimental treatment of not extending the probationary period and not giving the claimant the pay rise which was conditional on the extension occurred in November 2015 which predates the only disclosure which we have found to be protected and qualifying which occurred on 21 December 2015. It is a matter of logic that a protected disclosure should occur before the detrimental treatment. Given the disclosure occurred on 21st December 2015 and the detrimental treatment occurred before that in November 2015(p171-2) there can be no causal connection. Therefore the claim fails.

99. In case we are wrong about this the Tribunal relies on Ms Gourley's evidence to find the only reason the claimant's probationary period was extended was his performance, which is unconnected to his disclosure about food storage on 21 December 2015.

100. The Tribunal then turned to Mr Gradwell's claim that he was automatically unfairly dismissed for his protected disclosures.

101. There is no dispute that Mr Gradwell resigned. The Tribunal has found it was not a forced resignation because it is not satisfied Ms Gourley issued the claimant with an ultimatum to work excessive hours or be given his P45.

102. The Tribunal must then consider whether the termination of the claimant's employment amounts to a constructive dismissal. In a constructive dismissal the

employee terminates the contract with or without notice in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. S.95 (1) (c) Employment Rights Act 1996. The Tribunal must be satisfied that there was a repudiatory breach of contract so serious that it left the claimant no alternative but to resign, that he did not delay too long before resigning and that the reason for him leaving was the repudiatory breach. *Western Excavating v Sharp* 1978 ICR 221.

103. In this case the claimant has less than two years service. Accordingly he cannot bring a claim for "ordinary" unfair dismissal pursuant to s95 and s98 Employment Rights Act 1996. In bringing a claim that he was automatically unfairly dismissed pursuant to s103A Employment Rights Act 1996, given he has less than 2 years service, the burden is on him to show, on the balance of probabilities, that the dismissal was for an automatically unfair reason. *Ross -v- Eddie Stobart Limited* EAT 0068/13. Thus he must show that there was a causal connection between his constructive dismissal and a protected disclosure.

104. We remind ourselves that the question for consideration is whether the protected disclosure was the principal reason that the employer committed a fundamental breach (if any) of the claimant's contract of employment that precipitated the resignation.

105. The Tribunal turns to the repudiatory breach of contract. We find the only potential repudiatory breach of the claimant's contract of employment, given the claimant's answers in cross examination, was the alleged requirement for him to work "excessive hours" and to work on his rest days. The Tribunal is not satisfied given the evidence of the claimant and Ms Gourley that the requirement for the claimant to work the hours he did at the relevant time and the requirement to work some of his rest days amounts to a repudiatory breach of contract. The Tribunal finds that this period of time prior to Christmas was very busy for the respondent in particular and the catering industry in general with a variety of Christmas catering events. The Tribunal relies on its fact finding that the claimant was working around 50 hours a week in the period prior to Christmas. The Tribunal accepts the evidence of Ms Gourley that the claimant was given time in lieu in the past when he worked in excess of his contractual hours. It relies on her evidence that the claimant was owed time in lieu and that she was making arrangements for him to take that time after Christmas.

106. The Tribunal relies on the claimant's contract at paragraph 7 that he will be expected to undertake duties outside of normal working hours for which overtime is not payable and the staff handbook which expressly states TOIL is available.P336

107. However if the Tribunal is wrong about that the claimant can show that the requirement to work rest days and excessive hours did amount to a repudiatory breach of contract, the Tribunal is satisfied that the claimant left in part because of that breach.

108. The next question is the causative connection to the only protected and qualifying disclosure we have found which was in relation to the claimant's complaint to Ms Gourley about the storage of food on the 21 December 2015.

109. We remind ourselves that the question for consideration is whether the protected disclosure was the principal reason that the employer committed a fundamental breach (if any) of the claimant's contract of employment that precipitated the resignation.

110. The question is therefore did the claimant's disclosure about the storage of food on 21 December 2015 to Ms Gourley cause her to breach the claimant's contract by requiring him to work excessive hours and on his rest days?

111. The answer to that question is no. Ms Gourley has satisfied us that the only reason she asked the claimant to work 50 hours a week and to come in on his rest days was that this was an extremely busy period before Christmas. The evidence shows the claimant was working these hours prior to his protected disclosure to Ms Gourley on 21 December. This evidence is inconsistent with the allegation that the reason the claimant was required to work excessive hours and come in on his rest day was because he complained about the storage of food on 21 December 2015.

112. For all these reasons the claimant's claim that he suffered detrimental treatment on the ground of protected disclosures fails and his claim that he was automatically unfairly dismissed because he made protected disclosures fail.

Breach of contract

113. The Tribunal turns to the claimant's claim for breach of contract: "Mr Gradwell alleged that he had been promised an increased rate of pay and this was not given", The issue for the Tribunal is whether Mr Gradwell was contractually entitled to that pay increase..

114. The Tribunal must consider the claimant's contract of employment. The contract is at page 323 to 328 of the bundle. There is no contractual entitlement to an increase in pay at the end of the probationary period in the contract of employment which was signed by the claimant.

115. The Tribunal had regard to page 106 and 107 of the bundle which show letters sent by email to the claimant on 16 and 19 March. The former states "I would be happy to look at an increase to £24,000 on satisfactory completion of six month probation". The latter email states "the starting salary will be £23,000 and we are prepared to review this to £24,000 on satisfactory completion of your six month probation". The Tribunal finds even if these emails can amount to a clause within the claimant's contract of employment, there is no contractual entitlement to an increase in pay. Rather there is a discretion the employer can exercise if the claimant completes his 6 months probation satisfactorily to consider an increase in

pay. There is no dispute that the respondent did not consider the claimant had satisfactorily completed his six month probationary period and it was extended.(p171-2) Accordingly the consideration for an increase in pay did not arise because the condition of completing the probationary period was not met.

116. Therefore the breach of contract claim fails.

Unlawful deductions from wages

117. Finally the Tribunal turns to the claimant's claim for unlawful deduction from wages in relation to overtime. The claimant claimed that he had not been paid £3,248 due for hours worked in excess of 37.5 hours per week from the start of his employment.

118. The relevant law is found in s13 ERA 1996, schedule 1. The issue for the Tribunal is did the claimant receive less than the sums properly payable under the terms of his contract?

119. The Tribunal has found that the claimant was a salaried employee. Clause 7 of his contract of employment states specifically states under the section entitled hours of work : "Your normal hours of work are 37.5 hours per week Monday to Friday although you would be expected to undertake duties outside normal working hours as and when required, for which overtime will not be payable".

120. The Tribunal therefore finds there was no contractual right to payment for overtime.

121. The Tribunal finds that in the respondent's organisation a system of time in lieu (TOIL) was administered where excess hours had been worked.

122. Accordingly because the claimant cannot show that he was contractually entitled to payment for working excess hours this claim must fail.

Ms McGahan Morton.

123. The claimant's claims were that firstly she was automatically unfairly dismissed by reason of her protected disclosures and secondly she suffered a detriment when the employer sent a negative reference to her current employer on the ground she made protected disclosures.

124. The Tribunal had regard to the email sent by the claimant's representative to the Tribunal on 25 August 2016 following the Case Management Order of Employment Judge Porter. This is found at pages 37 to 40 of the bundle. In it the claimant identified the disclosures of information she relied upon, how they were protected and qualifying within the meaning of the legislation.

Facts

125. The Tribunal makes the following findings of fact.

126. We find that the claimant started work for the respondent on Monday 22 June 2015 as a Finance Assistant. Her particulars of employment are at page 321 to 324. We find she worked 20 hours per week, 10 am to 2 pm Monday to Friday. Her pay was £18,000 per annum, pro rata £9,600 for 20 hours. Her pay was referred to as a "salary" and she was paid on the 15th of each month. There is no specific provision in relation to overtime. Mr Kennedy informed the Tribunal that Ms Morton was a salaried employee. We find that she was.

127. The respondent has a staff handbook. The claimant's contract of employment refers to the staff handbook in relation to the grievance/disciplinary procedure. The staff handbook states at Clause 1.1 see page 350 "there are no circumstances in which overtime can be paid". It goes on to state "time off in lieu may be granted when there has been a requirement on you to work significantly in excess of your normal hours".

128. There is no dispute that the claimant was summarily dismissed verbally by Gill Gourley on 19 January 2016. The claimant sent a letter requesting the reason for her dismissal. A letter was sent by email in response dated 22 January 2016 page 214 to 215

129. It is not disputed that the claimant's last day of employment was 31 January 2016 although she was not required to work her notice and did not do so. She was paid in lieu of notice.

130. We find there were no serious issues between the claimant and line manager Gill Gourley in the period from the commencement of her employment until Christmas of 2015.

131. We find the relationship deteriorated quickly in January 2016.

132. We find that on week commencing 4 January 2016 a stock take was due. We find that on Thursday 7 January 2016 both Gill Gourley and the claimant agree Gill Gourley expressed her significant concern to the claimant about invoicing. We find that Ms Gourley criticised the claimant in an open forum. We find this was in the presence of the stock taker.

133. We find the following day, Friday 8 January 2016 the claimant called Ms Gourley explaining she was going to the doctor as she had run out of tablets and would not be attending work. It was not disputed that staff members Gemma Spilling and Charlene Boylan were also absent from work on sick leave that day leaving the respondent, a small business, very short staffed. We find Ms Gourley

asked if the claimant would collect her medication outside of working hours. We accept Ms Gourley's evidence and find that the claimant replied that she could come in to work but it would only be for three hours and the claimant suggested she work on Saturday 9th January instead. Alternatively the claimant said she would not go and get her painkillers from the doctor and take the week off sick instead.

134. There is no dispute that Ms Gourley agreed to the claimant taking the day off and working Saturday 9th January instead. We find the reason she agreed to do so was because she felt under pressure from the claimant given her threat to take the week off on sick leave.

135. The following day 9 January we find Ms Gourley attended the centre unexpectedly to meet a potential new Assistant Bar Manager.

136. There is no dispute there was a conversation between the claimant and Gill Gourley on 9 January 2016. There is a dispute as to the content of that conversation. We prefer the recollection of Gill Gourley. This is because her recollection is more clearly supported by the more contemporaneous documentation. Her recollection is set out in her statement at paragraphs 61 and 62 and is supported by her reply to the claimant's grievance in particular at page 270. Her recollection was that the conversation was primarily about the claimant suggesting that she needed to look at her management style as she was upsetting everyone and Ms Gourley conceding that due to the pressure she was under she may have spoken inappropriately on occasion.

137. The claimant's own recollection of events closer in time is set out in her appeal letter which commences at page 216. In the section dealing with that meeting (see page 218 to 220) the claimant does not mention national minimum wage or excessive working hours. The conversation relating to Charlene Boylan, which at the Tribunal the claimant suggested was one of the reasons why she said staff were working excessive hours and becoming ill, does not appear to have occurred until after the conversation with Gill Gourley about her management style given the chronology of the claimant's recollection at page 219 and 220.

138. There is no dispute that there was a conversation between the claimant and Charlene Boylan on or around the afternoon of 9 January 2016 in relation to Ms Boylan's health. There was a dispute about the precise nature of the conversation ie whether her ill health was pregnancy related or work related but we find it is not directly relevant to the issues we have to determine so we have not determined the content.

139. We find on 13 January Tommy Whelan, Bar manager, told Ms Gourley that the claimant had spoken to the staff asking them to report any concerns to her (the claimant).

140. We find Ms Gourley immediately asked the claimant if this was true. We find there is a difference in her recollection and the claimant's of the conversation. Ms Gourley says the claimant told her it was true she had told the staff to come to her to report their concerns. She told Ms Gourley the main reason she had done this was

because she was angry with Ms Gourley for embarrassing her when Ms Gourley had criticised her on 8th February. (p271 and Ms Gourley's statement)

141. The claimant has a slightly different recollection. She agrees Ms Gourley asked her if she had told staff to come to her (the claimant) if they had problems at work. The claimant admits she said yes but that she told Ms Gourley she had only said it to Charlene Boylan. P221.

142. There is no mention in the claimant's appeal letter that she raised issues in relation to excessive working hours and minimum wage in her meeting with Gill Gourley on 13 January 2016. The only reference to excessive hours is in relation to a comment the claimant alleges Ms Gourley made to her: "I can only sack you if there is something wrong with your work or for excessive time off".

143. On Thursday 14 January the claimant informed Ms Gourley she needed to go home as she was ill. She reported sick the following day (which is not disputed)

144. We find this was a day she had previously requested as annual leave and had been refused the request. We find that at this stage Ms Gourley was finding the claimant increasingly difficult to manage and sought advice from Deborah Lucas.

145. There is no dispute that when the claimant returned to work on Monday 18 January there was a meeting between her and Ms Gourley. At that meeting Ms Gourley discussed her concerns about the claimant making financial decisions without her permission, in particular in relation to a salary increase for Charlene Boylan, namely that Ms Morton had processed it without obtaining her specific authorisation (although they had discussed it in general terms) and an extra payment to Peter Gradwell which was made without her approval. It is not disputed that the claimant told Ms Gourley that she was "making a mountain out of a mole hill". We find that Ms Gourley stated to the claimant they should reflect on the meeting.

146. We find that the following day Ms Gourley called the claimant to a further meeting, 19 January 2016 where she told her she had reflected on her behaviour and concluded that she had lost trust and confidence in her and that she was going to terminate her employment with notice. The claimant was paid in lieu of notice. We find that the claimant reacted angrily. It is not disputed that after she had been dismissed on the same day the claimant telephoned Brian Kennedy.

147. Mr Kennedy agrees the claimant telephoned him. There was a dispute about the content of the telephone conversation and its length. The claimant says it was twenty minutes, Mr Kennedy said it was a short conversation. We prefer Mr Kennedy's recollection. Mr Kennedy said the conversation was about the claimant being upset about the fact she had been dismissed. We find that this is more likely. We note that the claimant's letter of appeal which is very lengthy makes no reference to a telephone conversation with Mr Kennedy or any public interest disclosures made to him.

148. Following the claimant's request the respondent sent a letter detailing the reason for her dismissal. (P214-5).

149. The claimant sent a formal letter of appeal against her dismissal. It is a lengthy document.P239-249. The claimant states at page 217 "it is my belief that Gill Gourley's actions to dismiss me were made solely for her own personal reasons as there is no differences between us regarding work performance as she alleged in the dismissal letter, it was purely her behaviour and conduct towards myself and colleagues".

150. There was no disclosure of information in that document in relation to national minimum wage or excessive hours of work by the staff.

151. The claimant attended a meeting on 1 March 2016 when her appeal against dismissal was heard.

152. There is a note at the start of the appeal hearing (see page 252) where the claimant says "you have my written submission". The Tribunal finds this is a reference to the claimant's lengthy letter of appeal.

153. At the Tribunal hearing the claimant said that the document at page 104A and 104B in the supplementary bundle entitled "summary to read to panel at appeal hearing" was information she provided to the Appeal Panel. Mr Kennedy who was present at the appeal disputed this. He said this document was not read out at the appeal hearing, neither was a copy given to the Appeal Panel. It was not suggested to Councillor Murphy when she was cross examined that the document at p104A-104B in the supplementary bundle was read out at the Appeal Hearing, or that a copy was given to the Panel. We find there is no reference to this document in the list of documents before the Appeal.(p235)

154. We find the minutes of the appeal hearing do not suggest there was any detailed discussion in relation to national minimum wage or staff routinely working excessive hours.

155. The Tribunal finds the document at page 104A and 104B in the supplementary bundle entitled "summary to read to panel at appeal hearing" was not read out at the appeal hearing or provided to the appeal Panel. The Tribunal prefers Mr Kennedy's recollection to that of the claimant. The way the document is worded in particular its reference to protected acts and automatic unfair dismissal and victimisation does not appear to be consistent either with the claimant's letter of appeal or the notes of the appeal or of consistent with Mr Kennedy's recollection. In addition the final paragraphs on p104A do not read as if this was a document provided or read out at the appeal hearing because it states "this is information given after the appeal hearing from witnesses".

156. The Tribunal now turns to consider the issues in the case in the claimant's claims for public interest disclosure dismissal and public interest disclosure detriment as set out above.

157. The first step for the Tribunal is to consider whether the disclosures relied upon by the claimant are protected and qualifying within the meaning of the Employment Rights Act 1996.

158. The Tribunal turned to the first disclosure of information relied upon by the claimant as identified on 25 August 2016 in the reply to case management order from Employment Judge Porter (see page 37).

Disclosure 1

"The claimant made the disclosure to Gill Gourley the Centre Manager on 9 January 2016 that current staff had complained that the 60 hours a week they were being forced to work was making them ill and causing stress, and was a breach of their contracted hours of 37.5, staff were receiving approximately £4.70 per hour and was failing to meet the legal obligations set by national minimum wage. The claimant also informed Gill Gourley that these were the same complaints made in the three grievance received by three employees who had left the company in the previous month and due to the staff shortage unqualified inexperienced staff/office staff were being forced to perform duties of a Chef and kitchen staff which was not in their remit"

159. The first question for the Tribunal is was there a disclosure of information? The Tribunal relies on its finding of fact that the claimant in the meeting with Gill Gourley on 9 January 2016 did not make these complaints. The Tribunal relies on its finding of fact that discussion between the claimant and Ms Gourley on 9 January was the claimant informing Ms Gourley that Ms Gourley had embarrassed her during the previous week in front of the stock taker Jill and that she had a management style which was upsetting people. We rely on our findings of fact that Ms Gourley's recollection of events which we prefer to the recollection of Ms McGahan Morton is supported by documents completed closer in time to the incident namely the claimant's letter of appeal and Ms Gourley's response to it, neither of which refer to complaints that staff were not receiving the national minimum wage and were being forced to work excessive hours which made them ill.

160. Because we are not satisfied that a disclosure of information was made there is no requirement for us to continue whether it is protected and qualifying within the meaning of the Act.

Disclosure 2

161. We turn to disclosure two.

"On 13 January 2016 the claimant again disclosed to Gill Gourley the complaints of excessive working hours and admitted that she had said she would support a member of staff in raising a grievance to the Board of Trustees if the problems were not rectified".

162. The first question is was there a disclosure of information? The Tribunal relies on its findings of fact that the meeting on 13 January was initiated by Ms Gourley when she spoke to Ms McGahan Morton about her behaviour. The trigger for her concern was that the Bar Manager Tommy Whelan had told Ms Gourley that the claimant had spoken to all the staff asking them to report to her if they had any concerns. We find this was the issue discussed and we are not satisfied the claimant raised a complaint of excessive working hours or national minimum wage. Once again we rely on the documents that were completed closer in time to the events which occurred. Accordingly we prefer Ms Gourley's recollection of events - her witness statement in paragraph 65 and page 271. We find that Ms Gourley's recollection is consistent with the claimant's document at page 221. We find the only alleged mention of excessive hours in the claimant's document is by Ms Gourley not the claimant. We prefer the evidence of Ms Gourley that there was no discussion of excessive hours.

163. Accordingly because the Tribunal is not satisfied there was a disclosure of information in the terms it is not necessary to go on to consider whether the disclosure was protected and qualifying within the meaning of the Employment Rights Act 1996.

Disclosure 3

164. The Tribunal turns to the third disclosure.

"The claimant also made the same disclosures to Brian Kennedy on 19 January 2016 when she was summarily dismissed in a twenty minute phone conversation"

165. The first question is was there a disclosure of information? The Tribunal relies on its finding of fact. There is no dispute that after the claimant was dismissed she telephoned Brian Kennedy who is a Trustee and was a member of the appeal panel. Although both Ms McGahan Morton and Mr Kennedy agreed that she telephoned him after her dismissal there was a factual dispute about what was said. Mr Kennedy said it was a relatively brief conversation where the claimant complained about the fact she had been dismissed. He was quite clear that there was no discussion of a suggestion by the claimant that the staff were being forced to work 60 hours a week making them ill and causing stress or any discussion of national minimum wage.

166. The claimant in her paragraph 56 has a different recollection. We prefer Mr Kennedy's recollection. There is no reference in the claimant's lengthy letter of appeal to suggest that she had made disclosures to Mr Kennedy following her dismissal that there was a breach of the national minimum wage or that she had complained that staff were being forced to work excessive hours. Accordingly we are not satisfied that the claimant's recollection is correct and having found as a fact that she did not make the disclosures of information to Brian Kennedy in relation to national minimum wage and excessive hours, it is not necessary to determine the

next issue which is whether any disclosures were protected and qualifying within the meaning of the Employment Rights Act 1996.

Disclosure 4

167. We turn to disclosure four.

"The claimant made a detailed account of the above disclosures to the Board of Trustees on 29 January 2016 for her appeal hearing to her dismissal".

168. The first question is was there a disclosure of information? We find that the claimant send a detailed letter of appeal dated 28 January to the respondent (see page 216 to 226). The Tribunal has scrutinised this letter of appeal carefully. The Tribunal cannot find any disclosure within that document where the claimant is complaining to the respondent that the staff were being required to work 60 hours a week which was making them ill and causing them stress and was a breach of their contracted hours of 37.5 and that staff were receiving £4.70 an hour and the respondent was failing to meet the legal obligations set by national minimum wage.

169. Therefore as the Tribunal is not satisfied that the disclosure of information relied upon by the claimant is contained in her letter to the Trustees for her appeal, it is not necessary for us to go on and determine the issues of whether the disclosures were protected and qualifying within the meaning of the Act.

170. Disclosure 5

"The claimant made the same disclosures on 1 March 2016 to Teresa Grant, Sue Murphy and Brian Kennedy the panel presiding over her appeal hearing all of whom are members of the Board of Trustees".

171. The first question is: was there a disclosure of information? The Tribunal finds that there was no disclosure of information in the terms relied upon by the claimant. The Tribunal is satisfied that the appeal panel had before it the claimant's letter of appeal. We find that in the notes of the appeal (see pages 252 to 255) the claimant states "you have my written submission". We find that this is the claimant's detailed letter of appeal.

172. The Tribunal has had regard to the evidence of the respondent's witnesses Councillor Murphy and Mr Kennedy and the notes of the appeal. The Tribunal finds no reference to the issue of staff not being paid national minimum wage and staff being required to work 60 hours a week being discussed at the appeal hearing.

173. It was suggested to Mr Kennedy that a document entitled "summary to read to appeal panel at appeal hearing 1 March 2016" at page 104A to B supplementary bundle was read out to the appeal hearing. Mr Kennedy was sure it was not.

174. The claimant said in cross examination the document was read out to the Appeal Panel. The Tribunal prefers the recollection of Mr Kennedy. The Tribunal

finds Councillor Murphy who chaired the appeal was a clear and conscientious witness. The Tribunal accepts Councillor's Murphy's evidence that the panel read the documentation at pages 234 to 251 of the bundle as well as the company handbook. The Tribunal notes that Councillor Murphy had considerable experience of dealing with the local authority appeals against dismissal and had received training from the Council on how to conduct appeals. It was not suggested to her that p104A-B was before the Appeal Panel. The Tribunal relies on its finding of fact that this document was not given to or read aloud to the Appeal Panel.

175. Accordingly the Tribunal is not satisfied there was any disclosure of information in relation to staff working 60 hours a week in excess of their contracted hours of 37.5 or that there was any disclosure about failure to pay the national minimum wage. Once again therefore it is not necessary for us to determine whether any such disclosures were protected and qualifying within the meaning of the legislation.

176. Strictly speaking there is therefore no requirement for the Tribunal to consider whether there is any causal connection between the claimant's dismissal and the alleged protected disclosures because we have found there was no disclosure of information. However, for the sake of completeness and in case it is wrong about one or any of the protected disclosures the Tribunal has considered causation.

177. The Tribunal reminded itself of the relevant law as stated above in Mr Gradwells's case. The claimant had less than two years service with the respondent when she was dismissed. Therefore it is for her to, because she has less than two years service, to show evidence to suggest that the principal reason for the dismissal was that she had made protected disclosure(s).

178. In answering this question the Tribunal must have regard to the reason given by the respondent. The respondent's reason for dismissal is given in their letter of dismissal at page 214 and 215. In short, the respondent relies on the breakdown of the relationship between Ms McGahan Morton and her manager as being an irreparable breakdown in trust and confidence. Specifically Ms Gourley relied on the claimant undermining her with other members of staff.

179. The Tribunal is satisfied that the evidence shows the real reason the claimant's employment came to an end was because of a breakdown in a relationship between herself and Ms Gourley in January 2017. The claimant's own evidence stated "it is my belief that Gill Gourley's actions to dismiss me were made solely for her own personal reasons as there is no differences between us regarding work performance as she alleged in the dismissal letter, it was purely her behaviour and conduct towards myself and colleagues...". P217

180. The Tribunal relies on its finding of fact. Accordingly even if the claimant did make protected disclosures, the Tribunal finds satisfied the real reason for the dismissal was the breakdown of relationship between Ms Gourley, the claimant's line manager and the claimant. Therefore the claimant's claim that she was automatically unfairly dismissed for making protected disclosures fails.

Public Interest Disclosure Detriment

181. The first issue is whether the claimant made disclosures of information. The claimant relies on the same disclosures of information as in her unfair dismissal claim. The Tribunal finds for the reasons outlined above that there were not any relevant disclosures of information and therefore the claim fails at this stage.

182. However for the sake of completeness, in case we are wrong about that, the Tribunal has gone on to consider the alleged detriment. The claimant relies on a detriment that Gill Gourley sent a negative reference to her current employer dated 3

183. March 2016. The Tribunal has some doubt whether this can amount to a detriment because it is factually correct. When asked why did the applicant leave her employment the respondent stated "dismissal due to a breakdown in employee/manager relationship". See page 257.

184. However if this amounts to a detriment then we must go on to consider the causal connection. We remind ourselves of the reverse burden of truth in s48(2) ERA 1996.

185. We find that the provision of the reference to the claimant's current employer was in no sense whatsoever related to any protected disclosures. We find the respondent has shown the only reason the respondent provided a reference which stated the claimant was dismissed due to a breakdown in employee/manager relationship was because a reference had requested and the respondent provide a reference in reply which was factually correct. Ms Gourley sought advice from the HR representative who advised her to reply, see page 258 to 259. Her advice was "I would just keep it very factual based upon your view of her until the date of dismissal". We find Ms Gourley was factually accurate when she said it was due to a breakdown of the manager/employee relationship. Accordingly this claim also fails.

Unlawful Deductions from Wages claim

186. We turn to the claimant's claim of unlawful deductions from wages. The claimant provided a Schedule on day two of the hearing showing she was owed wages in the sum of £1,022.41.

187. The first question for the Tribunal is did the claimant receive sums less than the amount properly payable?

188. The claimant's contract of employment is referred to in our findings of fact. We find she was a salaried employee at the relevant time and that the respondent's practice as set out in the company handbook was that salaried employees were not entitled to paid overtime. Instead there was a provision stating that "time off in lieu may be granted when there has been a requirement on you to work significantly in excess of your normal hours". See pages 335 and 350. The Tribunal has referred to both versions of the handbook as there was some lack of clarity as to whether the

correct handbook at the relevant time was the handbook, where the relevant page is at 350 or the handbook where relevant page is 335. The Tribunal finds this makes no difference to its decision because both handbooks make it clear there are no circumstances in which overtime can be paid to salaried employees and there is a system of time off in lieu which has discretionary aspect to it.

189. Accordingly the claimant's claim fails. We find she did not have she any contractual entitlement to be paid for additional hours worked.

Employment Judge Ross

Date 28 September 2017

REASONS SENT TO THE PARTIES ON

2 October 2017

FOR THE TRIBUNAL OFFICE

[JE]