



EMPLOYMENT TRIBUNALS

Claimant: Mr M Murphy

Respondent: Felix Inns Limited t/a The Malt Shovel at Barston

Heard at: Birmingham by CVP on 4 and 5 July 2022
Reserved decision 23 August 2022

Before: Employment Judge Hindmarch

Appearances

For the claimant: Mrs Murphy – Wife of Claimant
For the respondent: Mr Heard – Counsel

JUDGMENT

1. The claim of unfair dismissal is not well founded and is dismissed.
2. The claim of wrong dismissal is not well founded and is dismissed.
3. The claims for unlawful deductions from wages/breaches of contract are not well founded and are dismissed.

REASONS

4. This claim for unfair dismissal, wrongful dismissal and for payments owed came before me for a 2-day hearing by CVP on 4 and 5 July 2022.
5. The Claimant was represented by his wife, Mrs Murphy, and the Respondent was represented by Counsel, Mr Heard. We completed the evidence in the 2 days allocated for the hearing but did not have sufficient time to hear submissions. I ordered the parties to exchange written submissions, and any submissions in reply, and informed them that I would reserve my decision to 23 August 2022. I received written submissions and replies from both parties.
6. I had an agreed bundle of documents running to 342 pages. There was also a bundle of witness statements. There were 4 witness statements for each party. I heard evidence from 2 of the Respondent's witnesses, Mr Eric Cahill and Mrs

Heidi Cahill. The other 2 witnesses for the Respondent, Harit Sidhu (HR Consultant) and Jan Gliwa (Employee of the Respondent, in the role of front of house manager) did not attend to give evidence.

7. The Claimant gave evidence along with his witnesses Lee Cockerill, owner of Lee's Grimsby Fish, Joanne Hunt, Operations Manager of MPH Automotive Centres Ltd and Ian Whitfield, former employee of the Respondent.
8. Where I refer to employees of the Respondent who did not attend the hearing to give evidence, but whose names were mentioned in either witness evidence or in the documents, I do so by reference to their initials.
9. By an ET1 filed on 27 September 2021, following a period of ACAS Early Conciliation from 25 July 2021 to 31 August 2021, the Claimant brought complaints of unfair and wrongful dismissal. The claim form also referred to pension losses and other payments due. The Respondent accepts dismissing the Claimant, it says it did so for gross misconduct.
10. Given dismissal was accepted we discussed the issues at the outset. It would be for the Respondent to show the reason for dismissal and that the reason shown was a potentially fair reason for dismissal. The Tribunal would consider whether the Respondent had carried out as much investigation as was reasonable, whether it had come to a reasonable conclusion of (mis)conduct and whether it had applied a reasonable sanction in dismissing the Claimant.
11. The Claimant commenced employment at The Malt Shovel public house on 20 April 2000, initially as a junior chef. At that time the pub was owned by Bobby Brown Limited. In July 2018, the pub was acquired by the Respondent and the Claimant's employment transferred to the Respondent under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006. Mr and Mrs Cahill are the co-owners and directors of the Respondent. By the time of the Respondent acquiring the pub, the Claimant was employed in the role of head chef, a role he had held since 2006/2007. At the time of the Claimant's dismissal there were 26 staff members.
12. Mr and Mrs Cahill had previously owned and run care homes. In 2005 they acquired a restaurant. The acquisition of The Malt Shovel in 2018 was their first acquisition of a gastropub. The Claimant was made a director of the Respondent on 30 April 2019. He was not a shareholder. Prior to April 2021, Mr and Mrs Cahill only attended the pub premises 2-3 times a month. After reopening in April 2021, they were there daily.
13. At pages 44-45 of the bundle is a document signed by the Claimant on 13 June 2004, which details 'Rules to follow and apply in the kitchen' and lists the 'chefs' duties and responsibilities'. This includes rules for food storage and preparation. In short as head chef, the Claimant had overall responsibility for food hygiene. During his employment the Claimant underwent relevant training, including completing and passing a level 3 Food Hygiene and Safety Certificate on 6 July 2020, a copy of which is at pages 67-68.

14. In April 2020, the Respondent decided to close the pub due to COVID-19 restrictions and to utilise the Coronavirus Job Retention Scheme. On 1 April 2020, the Claimant agreed to go on Furlough leave. The email from Mr and Mrs Cahill to the Claimant on 1 April 2022 references the furlough scheme and the 80% of salary which will be paid. It makes no reference to any pension payment. The Claimant's email in reply confirms that 'I accept and agree to the conditions regarding furlough scheme.'
15. The pub reopened in August 2020 but closed again from November 2020 to April 2021. The Claimant was, in his words, 'nervous' about returning to work in 2021. In particular he was concerned about achieving a fair work/life balance. The Claimant informed Mr and Mrs Cahill about the extension of the furlough scheme and suggested that they delay re-opening from April 2021 to June 2021. His approach understandably caused concern for Mr and Mrs Cahill that their head chef may be reluctant to work. There was a staff meeting prior to the re-opening during which a discussion took place about a wedding which was booked to take place at the pub in the summer of 2021. The witness statement of Mr Gilwa referred to the Claimant commenting at that meeting and with regard to this event 'I won't be there'. In the bundle at page 362 is an email to Mrs Cahill from DC, restaurant manager at the pub, who states that she also attended the meeting and, as regards the forthcoming wedding booking, the Claimant stated he 'might not be here by then'. These comments were put to the Claimant in cross-examination. He agreed he had made the comments and that he 'was fed up' but said they were not an indication that he would certainly be leaving but rather that it was a possibility.
16. It therefore appeared to the Respondent that the Claimant was reluctant to return to work. When the pub did re-open on 12 April 2021, there was a need to recruit new staff including 3 new chefs. Mr and Mrs Cahill decided to become more involved in the running of the business and Mr Cahill was working with the Claimant regularly. Mr Cahill formed the view that the Claimant was lacking in motivation and urgency.
17. On 21 April 2021, Mr Cahill spoke with a newly appointed chef who told him the role was "challenging" and reported that the Claimant was a poor communicator, did not talk and did not make the new team members feel welcome. In evidence the Claimant accepted that his communication at this time was poor and sometimes tense. He explained that it was busy and that 'certain (staff) members thought they were better than they were'.
18. It is clear that the first few weeks of (post-lockdown) opening from April 2021 were a very busy time for the pub and that the Claimant and all staff members were busy and were working long hours. By the end of April there was a full compliment of kitchen staff and the initial 'rush' had eased.
19. On 27 April 2021, a meeting took place between the Claimant and Mr and Mrs Cahill. This meeting followed an earlier meeting between them in March 2021 which had taken place when the Claimant visited the Cahills at their home in Devon. At that earlier meeting, the Claimant had expressed reservations about returning to work and they had all agreed to meet up again a few weeks after re-opening. Unknown to the Cahill's, the Claimant recorded the April meeting and a

full transcript is at pages 101-164. The meeting was lengthy and the subject of the Claimant's employment with the Respondent came up. Mr and Mrs Cahill asked the Claimant how he was feeling now that the pub had reopened and given his earlier reservations. The Claimant said in evidence that at this stage he was 'over-tired' and 'overworked in a very difficult environment'. He accepted the Respondent was trying to support him. The Claimant asked the Cahill's "So what happens if I was leaving? If I was putting in my notice next week...", to which Mr Cahill replied "No, I'm not asking you to do that". Later the Claimant acknowledged "I know what you're saying, you don't want me to leave". It is clear that the Cahill's at that stage did not want the Claimant to resign and that they were attempting to be supportive.

20. The following day, 28 April 2021, Mr and Mrs Cahill wrote to the Claimant. A copy of the letter is at pages 175-176. The letter refers to the recent recruitment of the new chefs and states that the Claimant needs to 'communicate more with them, indeed all your staff, building up good team spirit and morale'. The letter also requests that 'Lee the fish supplier' does not eat in the galley so as to avoid compromising 'our food hygiene standards'. The 'Lee' referred to is Mr Lee Cockerill who was a witness for the Claimant.
21. On 1 May 2021, the Claimant sent a letter to Mr and Mrs Cahill in reply. A copy is at pages 177-178. The Claimant referenced how hard he had been working during the first weeks of re-opening and that he felt he had a 'good rapport and working relationship with my staff'. He apologised for 'the fish supplier Lee eating on premises' and confirmed it would never happen again.
22. On 7 May 2021, the Claimant returned to work after 3 days off. Mr Cahill asked to speak with him. During the Claimant's absence Mr Cahill had witnessed a chef struggling with the ordering of supplies and he asked the Claimant where the chefs could locate a list of suppliers with contact details. Mr Cahill was also concerned that it was a Friday and the rota for the following week had not been done. It appears the Claimant would usually do the rota on a Wednesday but had been on leave. Perhaps understandably, given the long hours that had been worked prior to this, and the fact the Claimant believed he was being criticised for not doing something when he had been on no doubt much needed leave, the Claimant became frustrated and walked off saying 'this is a fucking joke'. This was overheard by Mrs Cahill and another staff member. Mr and Mrs Cahill sought to calm the situation and to offer any assistance that was required.
23. Mr Cahill had concerns about the management of the kitchen processes and staff had raised issues with him. He concluded matters were serious and he needed to address them. He decided it was necessary to hold an investigation meeting with the Claimant. This took place on 12 May 2021, with Mr and Mrs Cahill present. A copy of the notes are at pages 187-190.
24. At the outset of the meeting, Mr Cahill informed the Claimant that 'the meeting was taking place to inform him of certain claims and allegations brought to our attention by members of staff mainly food hygiene practices' and that it was 'a fact-finding mission'.

25. Mr Cahill put 5 allegations to the Claimant initially, concerning food storage and preparation. The Claimant offered no explanation but told Mr Cahill instead to 'read your list'. A further 5 allegations were put. The Claimant then asked for a colleague to join the meeting which was arranged. The Claimant did then provide some responses. It is clear the Claimant was upset about the allegations and that he expressed the views 'I won't be back' and 'I can't work with them anymore!' Mr Cahill explained the Claimant would not be required to work whilst further investigation took place. Later that day Mr Cahill wrote to the Claimant suspending him from work on full pay. A copy of the suspension letter is at page 191.
26. On 15 May 2021, Mr Cahill emailed the Claimant stating, 'should you wish to contact any employee who you feel could assist you in preparing an explanation for the allegations made against you... please contact me'. The Claimant replied mentioning 3 colleagues D, J and K. In fact, D had already given a witness statement to the Respondent during the course of the investigation. K gave a statement to the Respondent on 18 May 2021. They were not supportive of the Claimant.
27. On 17 May 2021, Mr Cahill emailed the Claimant asking that he attend a further investigation meeting on 19 May 2021. The Claimant did attend, and a copy of the notes are at pages 210-212. At this meeting Mr Cahill put a total of 14 allegations to the Claimant.
28. Mr Cahill's investigation had revealed a number of food hygiene/health and safety concerns. He decided there needed to be a disciplinary hearing. On 27 May 2021, he sent the Claimant an invitation to a disciplinary hearing, a copy of which is at pages 224-226. In this he set out the 14 allegations and he enclosed the evidence he had collated namely statements from staff (including himself) photographs and delivery notes. The letter explained that Mrs Cahill would be the decision maker at the disciplinary hearing. Mr Cahill would be in attendance as note-taker.
29. The disciplinary hearing took place on 1 June 2021. The Claimant chose to be accompanied by his wife which the Respondent permitted. The notes of the hearing are at pages 235-240.
30. Mrs Cahill telephoned the Claimant on 2 June 2021 to inform him she had decided to dismiss him for gross misconduct with immediate termination. She informed him she would set out matters in writing and she sent the dismissal letter on 7 June 2021. A copy of this is at pages 263-269. She offered the Claimant the right of appeal. Mrs Cahill found the following allegations proven: -
- a. Instructing a member of staff to regularly leave part of the premises unlocked during the night.

This concerned an allegation that the Claimant had instructed an employee of the Respondent to leave the dry/frozen food store unlocked overnight so that Lee Cockerill could deposit frozen fish there outside of the Respondent's business hours. The Claimant admitted doing this for a number of years. At the disciplinary hearing the Claimant suggested Mr Cahill had given permission for

this and that another supplier Holdsworth also deposited goods in the same way. Mrs Cahill further investigated these explanations. Mr Cahill told her he had not given any such permission (it being an insurance/security risk). She spoke with Holdsworth who confirmed they did not deliver any supplies out of hours. Mrs Cahill found the Claimant had been evasive and inconsistent in his responses and that his conduct was negligent.

- b. Cross contamination – the Claimant placing wet fish next to dessert preparation and preparing a vegan dish next to raw chicken.

The Respondent had obtained witness statements from members of staff who witnessed these practices, one of which (KH) (pages 206 and 369) described the Claimant's hygiene practices as 'shocking'. The Claimant during the investigation meetings either did not respond or said he could not remember but in any event there was no cross contamination.

Mrs Cahill upheld the allegation preferring the evidence of the witnesses to the lack of response/failure to recall stance taken by the Claimant.

- c. Inappropriate storage of food in the period 12-29 April 2021 in particular mussels which had died.

The Respondent had obtained witness statements from staff members regarding mussels being in a fish drawer that 'stank and were clearly dead and unfit for human consumption', despite them being 'in service' earlier that day. The Claimant could not recall serving the mussels on the day in question or receiving any complaints about them.

Mrs Cahill concluded the Claimant did not understand the appropriate way to store mussels and if these mussels were dead by evening they could not have been fit to serve that lunchtime. They should not have been served and should have been disposed of earlier.

- d. Regularly leaving food uncovered and unlabelled.

Witnesses had given statements regarding cleanliness and poor food storage and the Respondent had photographs evidencing its concerns. The Claimant during investigation referred to not using a label system but instead a date dot system. He explained he had always used that system but had not explained his system to the new chefs.

Mrs Cahill upheld this allegation. She concluded the evidence showed unacceptable food storage which was a concern given the nature of the Respondent's business.

- e. Poor hand hygiene – the Claimant washing and rinsing his fingers in a container which held utensils.

The Claimant was of the view this was a petty allegation. He accepted adopting this practice but was of the view it was low risk and that he regularly washed his

hands. Chefs had given witness statements criticising the Claimant on this practice.

Mrs Cahill upheld the allegation finding it to be unhygienic and that it could cause cross contamination.

- f. Double-dipping. The Claimant dipping his fingers into a sauce and tasting it then dipping his fingers into it again.

The Respondent again had witness statements from staff who had seen this. The Claimant during the investigation said he usually used a spoon and 'generally doesn't use his fingers' and 'if I do use my fingers, I use a different finger if I dip again'.

Mrs Cahill upheld this allegation. She again found this to be an inappropriate and unhygienic practice.

- g. The re-use of gravy/jus at Sunday lunch.

The Respondent had witnesses who said the Claimant regularly emptied unused gravy (reusing after a customer meal) into a pot to be used for another customer. At the disciplinary hearing the Claimant said he was in fact measuring wasted gravy/jus so they could measure usage. He denied placing the gravy/jus into a pot for re-use.

Mrs Cahill upheld this allegation. She preferred the account of the witnesses over that of the Claimant. She did not find the Claimant's account regarding the measuring to be credible.

- h. The Claimant allowing Lee the fish supplier to eat in the gallery, a practice which occurred regularly.

This issue had been mentioned by Mr Cahill in his letter to the Claimant of 28 April 2021. Witness statements taken by the Respondent suggested it was a regular occurrence and that it had occurred after Mr Cahill had asked for it to desist.

The Claimant said at the disciplinary hearing that it had been happening for years, but that when he was asked to stop it, he did.

Mrs Cahill upheld this allegation.

- i. On 26 April 2021. After Mr Cahill had removed Lee from the galley, the Claimant allowed Lee to return.

This overlaps with allegation h. above. The Claimant said he did not remember it. On his account after Mr Cahill had told him the practice should stop, it stopped.

Mrs Cahill upheld this allegation.

j. Communication issues reported by Chefs.

The Respondent had witness statement from chefs reporting to the Claimant who claimed he did not speak to them; he gave little or poor instructions and did not make them feel welcome. The Claimant's position was that he had been very busy and he had not had time to spend with them.

Mrs Cahill upheld this allegation.

31. The remaining 4 allegations were not upheld by Mrs Cahill and were dismissed.

32. The Claimant appealed the decision to dismiss by letter dated, 12 June 2021, a copy of which is at pages 270-272. Due to the small nature of the employer's undertaking and the fact both co-owners had been involved at the investigation and disciplinary stage, the Respondent outsourced the hearing of the appeal to Mrs Sidhu, a HR Consultant.

33. The appeal hearing took place via zoom on 21 Jun 2021. Mr Murphy again attended with his wife and Ms Thomason was the note-taker. The notes are at pages 278-286. The Claimant referred to 3 witnesses who he believed would support his appeal. Mrs Sidhu investigated further by speaking with 2 of these individuals. She concluded they did not in fact support the Claimant's case. Mrs Sidhu sent the appeal decision to the Claimant by letter dated 7 July 2021. A copy is at pages 294-300. She did not uphold the appeal.

SUBMISSIONS

34. I had detailed written submissions, and submissions in reply, from each party. I do not intend to rehearse these at length in this Judgment. In short, the Claimant's submissions referenced his length of service at the pub and his devotion to his work. The Claimant's position was that the sanction imposed (dismissal) was severe and that he should have been given an opportunity to rectify any shortcomings. The Claimant felt Mr and Mrs Cahill did not support him and did not involve him in planning for the business. The Claimant believed the process adopted which led to his dismissal was unfair in that the Respondent had arranged cover for him prior to informing him of his suspension, it has 'pushed' colleagues into giving statements against him, the Respondent went to great lengths to gather evidence against him, his explanations for the 10 allegations which were upheld were not considered, no consideration was given to his previous and lengthy good service and 2 out of the 3 witnesses he suggested would support him were not approached for statements prior to dismissal. The Claimant believes the real reason for dismissal was the Respondent's desire to save the cost of his salary.

35. The Claimant's submissions referenced a claim for £5000.00 'unpaid pension'. He says his pension contributions were not paid initially for 4 months after his employment transferred to the Respondent and again during the furlough leave period April-September 2020. The submissions also refer to a claim for June salary of £2647.43 and for £10,000.00 for profit related pay 'for the first 2 years

of the Respondent acquiring the business' presumably therefore for the period August 2018 – August 2020.

36. The Respondent's submissions dealt initially with the above-mentioned 'money claims arguing that they had been presented out of time'. The submissions referred me to established caselaw regarding conduct dismissals and wrongful dismissal. In short, they contended that the Respondent had shown a fair reason for dismissal (conduct), that it met the Burchell test, and that the dismissal was procedurally fair. There were also submissions on Polkey and contributory fault, should I need to consider these.

THE LAW

37. Dealing firstly with the 'money' claims it appears these are being put either as a claim for unlawful deductions from wages under S13 Employment Rights Act 1996 or as a claim for breach of contract.

38. The same time limit applies in either case. A Tribunal shall not consider the claim unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction is made (or series of deductions). The Tribunal may extend time where the Tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of three months and if the claim is presented within such further period as the Tribunal considers reasonable.

39. The burden to show that it was not reasonably practicable to present a claim in time and that it was presented within such further period as the Tribunal consider reasonable is that of the Claimant.

40. Turning to the unfair dismissal claim S98 Employment Rights Act 1996 provides

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show

(a) The reason (or, if more than one, the principal reason) for the dismissal, and

(b) That is is... a reason falling with subsection (2).

(2) A reason falls within this subsection if –

(b) relates to the conduct of the employee.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably it treating it as a sufficient reason for dismissing the employee, and

(b) Shall be determined in accordance with equity and the substantial merits of the case.”

41. The leading case on fairness in conduct dismissals is British Home Stores v Burchell (1978) IRLR 379. This requires the employer to show it genuinely believed that the Claimant was guilty of misconduct, that the employer had reasonable grounds on which to sustain that belief and that at the time the employer formed the belief it had carried out a reasonable investigation.
42. The Tribunal will also need to consider the band of reasonable responses test and must be careful so as not to substitute its view for that of a reasonable employer.
43. On the question of wrongful dismissal (and the dismissal in this case was a dismissal without notice) the question is whether the employee was in repudiatory breach of contract. Such a breach can be a single act or a cumulation of acts.

CONCLUSIONS

44. I note firstly that the Claimant had long service with the Respondent and a clean disciplinary record. The witnesses the Claimant called spoke to his diligence and hard work. He had worked his way up to the position of head chef. That role however clearly has responsibility for the development and nurturing of other staff members in the kitchen and for health and safety/hygiene practices. As a business providing food and drink these standards are rightly high as any lapse can result in customer complaint, reputational harm and worse case scenario customer ill-health.
45. It is clear that during the lockdown periods the Claimant was considering his work/life balance and he was reluctant to return to work when the pub re-opened. No doubt this goes some way to explaining his lack of interest with his new kitchen staff members.
46. The Respondent is a small undertaking in terms of administrative resources. I conclude that a fair and reasonable investigation took place once Mr Cahill was alerted to various concerns. The Claimant's initial reaction to being investigated was to close up rather than seek to offer explanations.
47. Having gone from an initial position of being supportive to the Claimant, the Respondent was right to be concerned about the various hygiene concerns being raised and to investigate this. The witness statements it obtained, and the photographic evidence supported its findings. In cross examination the Claimant accepted that the allegations were serious. The Respondent has shown the reason for dismissal was conduct and conduct is a potentially fair reason for dismissal within the Employment Rights Act 1996.

48. Turning to the sanction imposed I accept it may have seemed harsh to the Claimant. His witnesses suggested a more appropriate sanction should have been a warning. It is not for me to substitute my view for that of a reasonable employer. Mrs Cahill upheld 10 of the 14 allegations put to the Claimant. These were serious issues. The Respondent had clear rules for kitchen hygiene and the Claimant had undergone relevant training in July 2020. Mrs Cahill concluded that the Respondent could no longer trust the Claimant. I find that dismissal for gross misconduct was a sanction open to the Respondent and was within the band of reasonable responses.
49. I do not accept the Claimant's arguments regarding procedural fairness. I have already found the Respondent was supportive of him. There is nothing sinister in an employer who may be considering suspending an employee arranging cover for that individual. There is no evidence the Claimant's colleagues were 'pushed' into giving statements. The statements taken are all signed. It appears the explanations the Claimant gave were considered but were not accepted when evaluated against the evidence gathered in the investigation. Mrs Sidhu at the appeal stage did go and speak with 2 of the 3 witnesses the Claimant had suggested would vouch for him, and she concluded they did not in fact assist him.
50. I find therefore that the unfair dismissal claim must fail. I am not required in these circumstances to go on and consider Polkey and/or contributory fault.
51. On the issue of wrongful dismissal, I accept that the Respondent was entitled to dismiss summarily. The 10 allegations of misconduct amounted to gross misconduct which is a repudiatory breach of contract. Mr Cahill who gave evidence had witnessed a number of the issues himself. The Claimant must have known not to indulge in practices which could have led to cross-contamination, how to store food safely and hygienically and not to leave unsupervised premises open. The latter issue of itself was grossly negligent risking the Respondent's insurance and its premises.
52. Turning to the money claims. The Claimant led little evidence about these and no evidence as to why they had not been presented in time or why time should be extended. The pension payment claim was September 2020. The ET1 was presented on 27 September 2021, one year later and 9 months out of time. The Tribunal does not have jurisdiction to hear this.
53. The claim for any payments during the furlough period is also out of time. It also appears to have little merit given the Claimant agreed the terms of the furlough arrangement.
54. There also appears to be a claim for salary for June 2021. This would be in time. The claim is founded on Mrs Cahill informing the Claimant on 2 June 2021 that she would pay his salary for the whole month of June as a gesture of goodwill, and then not doing so. The note of the conversation is at page 249. The note records Mrs Cahill as telling the Claimant, 'it's a nil notice period but given your length of service and our relationship as a gesture of goodwill I am prepared to pay you one month salary up to the end of June.' This payment was

not referred to in the subsequent dismissal letter which stated no monies were due beyond the termination date.

55. The Respondent says there was no obligation to pay this sum as it was not a contractual agreement. I have some sympathy with the Claimant regarding this claim. Mrs Cahill's words clearly led him to believe he would be paid for the whole of June. In the submissions in reply the Claimant accepts this was not a contractually binding agreement but states that Mrs Cahill should be kept to her word. Unfortunately for the Claimant, the Tribunal cannot make an award for an amount he is not contractually entitled to.
56. Finally, I turn to the claim for profit related bonus. This relates to the period to September 2020. Again, this is significantly out of time and no evidence was led as to why I should extend time. Even if the claim was in time no evidence was led as to the existence of any bonus arrangement. The Claimant did not put any questions to the Respondent about this and, therefore, I cannot find any contractual entitlement or breach of contract.
57. For the reasons above the claims fail and are dismissed.

Judge Hindmarch
2 September 2022