



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Guergour

**Respondent:** Fort Roche GRP Ltd

**Heard at:** LONDON SOUTH

**On:** 30 August 2017

**Before:** E J SIDDALL

## **Representation**

Claimant: In person

Respondent: Mr I Wheaton, Counsel

# JUDGMENT

It is the unanimous decision of the tribunal that:

1. The claim for unfair dismissal contrary to Section 103A of the Employment Rights Act 1996, is not well founded and it does not succeed.
2. The claim for direct discrimination because of the protected characteristic of race contrary to Section 13 of The Equality Act 2010 does not succeed.

# REASONS

1. We have heard evidence today from the Claimant and from a witness who came in his support, a Mr Chakrani and we also heard from four witnesses on behalf of the Respondent: Miss Clarke, Mr Ali, Mr Willaerts and Mr Aden.
2. **The Claims**
3. The Claimant claimed first that his dismissal, on 16 February 2016, amounted to an automatically unfair dismissal contrary to section 103 of the Employment Rights Act 1996 because he made a protected disclosure, and second, that the dismissal amounted to direct discrimination because of the protected characteristic of race.

**4. Findings**

5. The facts we have found and the conclusions we have drawn from them are as follows:
6. The Claimant started work on 2 September 2016. He was employed by the Respondent, which is a security company, to provide security for one of their clients, the Ibis Hotel in Brighton. Mr Alex Willaerts had started working as a security officer in August 2016. There were a number of incidents where the Claimant covered for Mr Willaerts if he arrived late. Initially the two of them were quite co-operative in the way they worked together, but relations began to break down. Each of them accused the other of poor timekeeping and absenteeism, and this is evident, for example, in the exchange of texts which we have seen at pages 66-69 of the bundle.
7. Matters seemed to come to a head around 10 February 2016, following a complaint made by Mr Willaerts to the supervisor at the Ibis Hotel (who has been referred to as 'Junior'). Junior took the Claimant aside and challenged him about allegedly sleeping at work. The Claimant then sent a text to Mr Willaerts on 10 February telling him to 'keep his mouth shut'. Mr Willaerts contacted Mr Aden on 10 February asking if he could talk to him about issues to do with the Claimant. He was advised to contact the operations manager and so Mr Willaerts sent an email on 13 February (page 72 of the bundle) alleging that the Claimant had been going missing for long periods when he was meant to be on duty.
8. In the meantime the Claimant had contacted Mr Ali on 11 February by text. They then spoke on the phone and the Claimant said that he had concerns about Mr Willaerts which he wanted to discuss. Mr Ali stated that he was on his day off and suggested that an email be sent to the office. On 13 February Miss Clarke, (who was the new HR administrator and had only been in the post for a few days), contacted the Claimant and asked him to come in for a chat with the Respondent in London on 15 February. She stated in her email that they wanted to discuss an issue with another member of staff to see if it could be resolved. The Claimant replied on the same day as follows, in an email on page 74 of the bundle: 'Thank you for your invitation. Sure I will attend as the issues are related to the security of the hotel guests and Ibis hotel staff and not between myself and other security guards'.
9. Later that day Miss Clarke asked the Claimant to provide a statement about the issues. The Claimant sent an email to the Respondent on 13 February making a large number of complaints about Mr Willaerts. He stated that Mr Willaerts had a mental health problem, that he was spending time on his phone while at work, that he was not wearing his badge, that he was eating the guests' food and that he had lied to get the job. At the same time the Claimant said he would not attend the meeting in London as he wouldn't have time to travel. He was working in Brighton during the rest of the week for Sussex University.

10. There is then an exchange of emails in which Miss Clarke tried to persuade the Claimant that this was a serious meeting and that he should attend. Miss Clarke told the tribunal, and we accept, that she also tried to call the Claimant on his phone several times but he did not answer. The Claimant did not challenge this evidence. In any event the Claimant did not attend the meeting. Mr Willaerts did attend a meeting with the Respondent on 15 February 2016. We accept Mr Aden's evidence that following this meeting he phoned the general manager at the hotel in Brighton, who told him that the Claimant had been caught sleeping on site many times, that he was disappearing mid-shift, and it was also suggested that he had been harassing staff. The general manager made no complaints about Mr Willaerts during this telephone call. Miss Clarke later asked the general manager to confirm what he had said by email which he did (although his email did not arrive until after the Claimant had been dismissed).
11. Miss Clarke emailed the Claimant on 16 February 2017 to tell him that he was being dismissed due to conduct and performance. There were then email exchanges between the Claimant and Miss Clarke in which he queried the reasons for his dismissal and suggested that he was being discriminated against as Mr Willaerts was still working there. He also mentioned the possibility of a whistle-blowing claim.
12. During the course of the hearing we listened to a recording made by the Claimant of a telephone conversation between the Claimant and Miss Clarke which we find took place around 23 February 2016, during which Miss Clarke reiterated that the Claimant was being dismissed for performance and conduct reasons. The Claimant made strenuous efforts during this conversation to put his case across, and explained that he felt very hurt by what had happened. On 1 March 2016 the Claimant sought to appeal against his dismissal on the grounds that his contract had been terminated without investigation. He was not granted an appeal. The Claimant then brought proceedings claiming unfair dismissal and race discrimination.
13. We should mention that we also heard evidence from Mr Chakrani who is a former employee of the Respondent who has also been dismissed. This evidence related to the conduct of Mr Willaerts after the Claimant had been dismissed. It did not assist us in reaching a view on the reason for the Claimant's dismissal, and we were not able to take it into account.

**14. Decision**

15. Our decision is as follows.

**16. Automatic Unfair Dismissal because of a Protected Disclosure**

17. We note that the burden of proof is upon the Claimant to show that the reason or principal reason for his dismissal was a protected disclosure, as he did not have two years' service at the time of his dismissal.
18. We accept that the Claimant raised the question of hotel security in his email of 13 February which I have referred to. However, we find that this was not a qualifying disclosure under Section 43B(1)(D) of the

Employment Rights Act 1996, as the Claimant was not disclosing information that tended to show that the health and safety of any individual had been, is being, or was likely to be, endangered. There is no specific allegation in that email, or the later email which detailed concerns about Mr Willaerts, of any particular health and safety risk to any individual as a result of the issues raised by the Claimant. We find that issues of access to the hotel and the overall security of the building did not amount to specific health and safety concerns in this case.

19. We have noted that when the Claimant produced his statement later that day, his complaints are all about the performance and conduct of Mr Willaerts. We find that the Claimant was strongly motivated by his views of the unacceptability of Mr Willaerts conduct and performance. Even if this was a qualifying disclosure within 43B(1)(D), it was not made in the public interest.
20. If we are wrong on that, and the emails did amount to a protected disclosure, we find that the Claimant was not dismissed because of the concerns that he raised.
21. The Claimant was dismissed first and foremost because of the allegations made by a fellow employee and by a client, that the Claimant had been going absent for long periods during his shifts; and second because he refused an invitation to attend a meeting to discuss the concerns that had been raised.
22. We have noted the Claimant's concerns about the process followed by the Respondent in relation to the dismissal. We note that the Claimant was asked by email to attend for a 'chat', when in fact Miss Clarke says that the interview was intended to be a disciplinary hearing. We accept that when he received that email, the Claimant had no idea that his job was at risk. Whilst noting Miss Clarke's lack of experience at that time, the terminology used around such an important meeting is very significant, especially within a company where a number of staff do not have English as their first language. We find that in this case, the language used in the email of invitation was not appropriate.
23. We also note the failure to grant the Claimant an appeal. It is correct that the appeal was out of time by the date when it was made. We do not accept Mr Aden's explanation of security concerns as being behind the refusal to hold an appeal. An appeal hearing could easily have been held by telephone or off site. We are surprised at the way in which this matter has been conducted given Mr Aden's express concern that he wanted to protect everyone's rights within the company. We have also noted that the Respondent had access to legal advice. These procedural issues could have proved fatal if the Claimant had two years' employment. However, the burden of proof in this particular case is upon the Claimant to show that the reason, or principle reason, for his dismissal was the fact that he made a protected disclosure and, in this particular case, we find that he has not discharged that burden.

#### **24. Race Discrimination**

25. We have to say we find it difficult to understand the race discrimination claim. We note that the Claimant alleged that he was dismissed and that Mr Willaerts was kept on, and that this was discriminatory. Mr Willaerts is Belgian and the Claimant is Algerian, and we note the assertion of a difference in race combined with a difference in treatment. However, the situation of Mr Willaerts and the Claimant was not the same in relation to the allegations.
26. Ibis had made complaints against the Claimant but had not made complaints against Mr Willaerts. A further difference was that Mr Willaerts had attended the meeting to which he had been invited by the Respondent and the Claimant had not attended.
27. We have also noted that the Claimant has suggested in evidence today that the supervisor at the Ibis Hotel, Junior, could have been motivated by race in making a complaint against the Claimant. We note that this is not mentioned in the Claimant's witness statement, although he deals with his discussion with Junior at paragraph 10. We note also that the Claimant said by way of an alternative that Junior had simply disliked him from the start. At another point he suggested that the hotel might have wanted to reduce the number of security staff from two down to one in any case. When the Claimant was asked directly what factor race had played in his dismissal, he said 'well it helped'.
28. When cross-examining the Respondent's witnesses the Claimant did not put a suggestion to any of them that his dismissal could have been motivated by his race (or that the complaint from the client had been racially motivated).
29. In the face of so many different possible explanations as to why the hotel acted as they did, we have found the Claimant's case on this allegation to be very confusing. The allegation of a racial motivation behind the complaint is not supported by any evidence and it is contradicted by the alternative explanations that have been put forward by the Claimant.
30. With reference to section 136 of the Equality Act 1996 there are no facts from which we are able to conclude that the Respondent treated the Claimant less favourably than Mr Willaerts in relation to his dismissal, because a quite different situation applied to him. In all the circumstances we find that the case for race discrimination is not made out and this claim also fails.



