EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100578/2021 (V)

Held on 4 and 5 July 2021 by Cloud Based Video Platform

Employment Judge Campbell

Ms Amanda Sinclair	**Claimant** **In Person**
Hotel Corporation of Edinburgh Limited	**Respondent** **Represented by** **Mr Paras Gorasia,** **Counsel**

JUDGMENT

The judgment of the tribunal is that:

1. The claimant was not unfairly dismissed and her claim of unfair dismissal is refused;

2. The respondent did not either make an unlawful deduction from the claimant's wages, or breach her contract of employment, by non-payment of any sum to her in respect of lying time and any such claims are refused; and

3. The respondent breached the claimant's contract by not reimbursing her £10 which she initially paid as a deposit for a locker key and later returned, and the respondent is ordered to pay her that sum as damages.

REASONS

Introduction

1. This claim arose out of the claimant's employment with the respondent. The respondent operates the Sheraton Grand Hotel and Spa in Edinburgh. It is part of the Marriott group of hotels.

2. The claimant's dates of service were agreed to be from 27 April 1992 to 23 October 2020. She was dismissed on the latter date by being given 12 weeks' notice. The respondent maintains that she was dismissed by reason of redundancy.

3. Evidence was heard from the claimant and, on behalf of the respondent, Ms Claire Dickie, HR Manager and Ms Maria Seisdedos, Acting Manager.

4. Although there was a degree of dispute over a small number of details of the evidence, the witnesses were all found generally to be credible and reliable.

5. The parties each prepared their own bundle of documents. There was inevitably a degree of duplication between the bundles. Page references below are references to those pages in the respondent's bundle. The claimant also provided a schedule of loss and the respondent provided a reading list. Closing submissions were delivered orally and noted by the tribunal.

Issues

The issues to be determined in the claim were as follows:

1. Which legal entity was the employer of the claimant?;

2. Did that entity unfairly dismiss the claimant under section 94 of the Employment Rights Act 1996 ('ERA')?;

3. Did it make an unlawful deduction from the claimant's wages contrary to section 13 ERA, or breach the claimant's contract, by not paying her one week's pay representing lying time, or the sum of £10 by way of reimbursement of a locker deposit?

4. If the answer to either 2 or 3 is yes, what compensation or damages should be ordered?

Findings in fact

1. The following findings in fact were made as they are relevant to the issues.

2. The claimant was employed by the respondent as designated above between 27 April 1992 and 23 October 2020. She had raised her claim against 'Sheraton Grand Hotel and Spa' but the respondent had defended the claim on the basis that it had been the claimant's employer and was therefore the correct party to answer the complaints made.

3. The claimant signed a written statement of particulars of employment on 27 April 1992 [R46]. On the same date she countersigned a letter from the respondent dated 3 April 1992 which stated:

> *'The Sheraton Edinburgh is owned by the Hotel Corporation of Edinburgh Limited and operated by Sheraton Hotel's [sic] (England) Ltd as agent for Hotel Corporation of Edinburgh Limited and as such Is the employer of all employees of the Sheraton Edinburgh Hotel.'*

4. The claimant's payslips had the name Hotel Corporation of Edinburgh Limited on them [R465-471] as did the P45 certificate she received [R472-474].

5. Hotel Corporation of Edinburgh Limited is a legal entity registered at Companies House [R40] whereas Sheraton Grand Hotel and Spa is not.

6. The claimant worked as part of a team within a function of the Sheraton Grand Hotel and Spa in Edinburgh named the Guest Service Centre. She was The Lead Guest Service Centre Agent and the most senior person in that team. Members of the team would deal with incoming telephone enquiries and requests from the public and guests staying at the hotel, and either action the request or direct it to another appropriate person to deal with it. There were eight people in the team.

Initial redundancy exercise

7. As a result of the Covid-19 pandemic the respondent presented a briefing to staff on 16 March 2020 [R101-117]. This conveyed that a downturn in business levels was anticipated as a result of the pandemic and outlined some cost saving measures which were already being implemented, and some further measures which were being introduced. It asked employees to consider working to short-time arrangements on a temporary and voluntary basis.

8. In March 2020 following the implementing of lockdown measures the respondent had to close to guests. With the exception of a skeleton staff team, the respondent put its employees on furlough under the UK government's Coronavirus Job Retention Scheme in late March 2020. That included the claimant, who received 80% of her normal pay while on furlough until she was given notice to terminate her employment on 22 July 2020, from which point she was paid her salary in full until her employment ended.

9. A further briefing was delivered to staff on 26 May 2020 by zoom. The text of the presentation was prepared in advance [R123-124]. This confirmed that redundancies were anticipated throughout the hotels across the respondent's group. Consultation was initially to take place on a collective basis via staff representatives, who would filter relevant information to affected staff.

10. On 4 June 2020 the first of four collective consultation meetings took place, again virtually. A PowerPoint presentation was delivered and provided to employee representatives [R125-184]. This contained the respondent's proposed redundancy plan in detail. It explained which departments would be affected, how many redundancies would be made within each and the pools which would be used for selection. It also set out the criterial which would be scored. Essentially there were four, namely (i) performance as assessed at the most recent annual appraisal, (ii) qualifications, (iii) experience across sites and/or disciplines and (iv) disciplinary record. These criteria were used for redundancies being implemented in a number of hotels within the respondent's group. They were not devised or solely applied by the respondent. The basis for calculating redundancy pay was also clarified;

employees would receive their statutory entitlement. Only one new role was envisaged, namely a Health, Safety & Security Manager.

11. The plan was framed as a proposal for the staff representatives to consider and respond.

12. A second collective consultation meeting was held on 17 June 2020.

13. The claimant was pooled along with the other seven Guest Service Centre Agents. The respondent proposed to reduce the number to three. The respondent's rationale for deciding on that particular pool was that each person's role was essentially the same in nature and there was significant overlap in the experience and skills of the individuals within it. The approach was not challenged by the employee representatives.

14. The claimant had a concern about being placed in this pool which she raised with her employee representative, Pikwa Sum. She wanted to be pooled with other supervisors rather than everyone in the Guest Service Centre. In turn that was relayed to Claire Dickie, at that time Assistant Director of Human Resources. Ms Dickie offered the claimant the opportunity to be pooled separately on the proviso that her other Guest Service Centre Colleagues agreed. The claimant asked one of them, Alan Scrimgeour, whether he would be prepared to move to a different pool. He objected. The claimant therefore did not ask anyone else, and accepted she would be pooled as the respondent had planned.

15. The claimant appeared to think at this time that she was the only Guest Service Centre agent at risk of redundancy, although that was not the case [R191]. Everyone in the pool of eight was at risk, subject to the outcome of the scoring exercise.

16. In any event, the respondent decided a short time after to close the Guest Service Centre.

17. The claimant offered to make every effort in terms of workload and being flexible to help save her job [R193]. She was prepared to work reduced hours up to a point.

18. The claimant asked Ms Sum on 24 Jun 2020 to enquire about the terms which would be available for voluntary redundancy [R196]. The response which came back was that it was not the respondent's policy to pay enhanced amounts.

19. By 25 June 2020 the respondent's forecast was that the business would take 12 to 18 months to recover.

20. On 30 June 2020 one of the Guest Service Centre Agents, Anya Toledo-Kitzhofer, gave notice of resignation. This left seven in the pool.

21. The third collective consultation meeting with staff took place on 1 July 2020. Again a PowerPoint presentation was provided, updating staff on the details of the plan [R213-271]. This was an expanded version of the previous presentations and provided a detailed and updated version of the redundancy plan. It outlined 'the new norm' in terms of levels and areas of expected activity in the coming months. Updated structure charts showed the changes which would be effected in roles and numbers. The selection exercise was said to be planned for the week commencing 13 July 2020. Individual consultation meetings would take place in relation to that. Applications for voluntary redundancy were requested by 8 July 2020. The scoring criteria and method were reiterated, and were unchanged from before.

22. In response to a query raised by the claimant, Ms Dickie clarified by email on 2 July 2020 that staff who were not made redundant would be brought back from furlough on a staged basis as activity improved. By this point she was able to clarify that with the resignation of Ms Toledo-Kitzhofer, the respondent was intending to remove 4 Guest Service Centre roles. She confirmed that the Centre was not going to reopen 'in the near future'.

23. The fourth and final collective consultation meeting took place on 8 July 2020. There was no material change to the previous version of the plan as it applied to the claimant.

24. Following the presentation the proposal was adopted as the plan the respondent would follow.

25. The claimant asked Ms Dickie by email on 10 July 2020 whether the Guest Service Centre would be re-opened or remain closed permanently [R351-352]. Ms Dickie responded to say it would be dependent on occupancy levels returning to a suitably high level, which was uncertain but could take 12 or even 18 months.

Scoring, selection and individual consultation

26. Ms Dickie wrote to the claimant on 13 July 2020 to confirm that her job was at risk and to confirm that the selection process would begin on 17 July 2020, involving an assessment by Ms Dickie, Maria Seisdedos who was the claimant's line manager, and Tristan Nesbitt the hotel manager. It was explained that the claimant would then have the opportunity to discuss her score [R353].

27. The respondent asked staff at risk to complete a template profile form to include details about their role, skills, performance and experience. The claimant sent a completed profile form to Ms Dickie, also on 13 July 2020 [R354-358]. She had a concern that an earlier disciplinary warning might be considered and count against her. It was confirmed that it would not be as it had expired.

28. The claimant was assessed on 17 July 2020 and an assessment matrix form was completed [R358-359]. The template was used throughout the respondent's group in redundancy exercises taking place in numerous hotels at the same time.

29. Part of the assessment involved consideration of the claimant's last completed annual appraisal, which was for 2018-2019 [R360-364].

30. The claimant achieved a score of 18 in the assessment. Her colleague Alan Scrimgeour also scored 18. Another agent, Anne Turner, scored 22. Arantzazu Mora Bellido scored 15. Jack Roberts scored 18. Slawek Konieczny scored 18. David Perez scored 21.

31. The claimant did not query or challenge her score either during the process or with the respondent's witnesses in the tribunal hearing.

32. Ms Dickie emailed the claimant on 17 July 2020 to confirm her role was still at risk of redundancy [R399-400]. She proposed to have a one-to-one meeting with the claimant the following Monday, 20 July 2020.

33. The meeting proceeded as arranged, involving the claimant, Ms Dickie and Ms Seisdedos. It was conducted remotely. Ms Dickie led the discussion and covered points from a pre-prepared script, allowing the claimant to respond. It was made clear that the claimant was being provisionally selected for redundancy. She was given the opportunity to challenge the process or suggest proposals of her own. She was asked to consider the position ahead of a second meeting approximately a week later. Where discussion took place it was summarised by a handwritten note made by Ms Dickie [R404-408]. In particular, Ms Dickie noted that the claimant did not need to discuss the pooling or selection aspects of the process further, and had said her redundancy was 'inevitable'. She also needed clarity in relation to the termination payment figures. She did not want to have a further meeting. She was asked to confirm that position in writing.

34. Following the meeting Ms Dickie sent redundancy figures to the claimant [R409-410]. Those conformed to the claimant's statutory entitlement to redundancy and notice.

35. Ms Dickie also answered some follow-up queries the claimant had by email on 20 July 2020 [R411-412]. One matter raised by the claimant was as follows:

> *'When I started 28 years ago in housekeeping I worked casual and had to work a week's lying time prior to signing a full time contract do I receive this weeks pay also?'*

To which Ms Dickie responded:

> *'I am of the understanding that all outstanding monies were paid out at some point years ago when the hotel moved from different pay bases. As a result we are now in a situation as you are aware that when we*

pay on 27th of the month we pay for the 1st to end of month and no one is sitting with any balance of payment owed.'

36. The claimant emailed Ms Dickie back to seek further clarification in relation to her rate of pay and her pension, but said nothing further in relation to the above exchange relating to lying time pay.

37. After the respondent's basis for calculating the claimant's pay was clarified for her, the claimant emailed Ms Dickie on 22 Jul 2020 to say:

'It is with a heavy heart and sadness I am writing to you to accept the settlement figures you have sent me since being selected for redundancy.

'I shall no longer require the 2nd consultation meeting due to me accepting the figures as discussed.'

38. Ms Dickie wrote a letter to the claimant dated 22 July 2020 [R429-430], confirming that she was being given notice of termination of her employment which would take effect on 23 October 2020 after her 12-week notice entitlement had been served. She was to remain on furlough but would be paid her full contractual pay. She would also be paid for accrued annual leave. She was given the option to appeal her dismissal to Mr Nesbitt, the hotel General Manager.

39. The other agents in the Guest Service Centre who had either requested redundancy or been unsuccessful in the scoring exercise were given similar notice of termination around the same time.

40. In total 52 employees were made redundant by the respondent in the process.

Second phase of redundancies

41. As the effects of the pandemic continued throughout 2020 the respondent took the decision to begin a second phase of redundancies.

42. In late October 2020 an initial proposal was shared with employee representatives. The process was paused briefly in early November 2020 following the announcement on 31 October 2020 of a second set of restrictions by the UK government.

43. A presentation was given to staff in November 2020 [R487-531]. Further redundancies were planned. In particular, one department named Resort Sales was to be closed and all roles within it removed. The Resort Sales team had its own office and a number of duties including guest bookings, manging promotional offers, group bookings, hotel packages and extra services. They dealt with third parties to promote the hotel via social media and managed the room pricing strategy.

44. Mr Nesbitt, the respondent's the General Manager, considered the effect of losing all of the Resort Sales staff. He saw two particular issues with that, namely that passing any of their residual duties to the already diminished Front Office team may result in overload, and that Resort Sales staff had knowledge that other staff did not, which would therefore be lost to the business. This particularly included familiarity with certain systems used in the course of their duties, such as 'Marsha' and 'Oxi'.

45. Mr Nesbitt was aware of a role utilised in other hotels within the group, although not the respondent's own hotel, namely Rooms Controller. He believed that the creation of one such position could solve the above issues, but did not know the full specifics of the role and by email on 13 November 2020 sought to discuss it with Ms Seisdedos and another employee, Michelle McArdle [R533a].

46. Following that discussion Ms Seisdedos emailed Mr Nesbitt to list the daily duties of the Resort Sales staff [R534]. She welcomed the possibility of a role being created to retain a potentially redundant member of staff.

47. Ms Seisdedos found a copy of the Rooms Controller job description, although it was dated 2008 [R538-540]. It was suitable to the respondent's requirements in some respects but needed to be adapted to incorporate the key skills held by the Resort Sales team.

48. Mr Nesbitt needed to obtain the consent of the respondent's owners to creating the new role. He discussed it with them in mid-November 2020 and emailed Ms Dickie on 17 November 2020 to say:

> *'They [the owners] were ok with it so I think we're good but I just don't want to commit to anyone yet – still waiting to see if we go further into more restrictions this week and want to keep the flexibility if needed…'*

49. The role was approved and added to the respondent's group careers website on Friday 20 November 2020. It was filled by a member of the Resort Sales team.

The claim of unfair dismissal under section 94 ERA

50. It is necessary to consider whether the claimant was unfairly dismissed under section 94 and, in particular, section 98 ERA.

51. First it is necessary to establish the reason for dismissal and consider whether this is a permitted reason within section 98(1) and (2) ERA. The onus is on the dismissing employer to do so.

52. The respondent contends that the claimant was dismissed by reason of redundancy within section 98(2)(c), which would therefore be a fair reason. This is not challenged by the claimant and is accepted to be correct.

53. There was a volume of evidence in support of this being the reason for the claimant's dismissal, both documentary and oral. It was clear that the respondent was facing a drastic downturn in its business and concluded that it would need to reduce costs and remove roles which were not essential, merging some sets of duties in some instances. There was clearly a reduction in work for employees to do as from March 2020 until the end of that year guest numbers at various times were either drastically reduced or zero. The respondent was entitled to conclude that it needed fewer employees. There was no evidence of any significance to suggest a different reason.

54. The requirements of section 139 ERA, which reads as follows, were met:

> ***139 Redundancy.***

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

55. Next the requirements of section 98(4) must be considered, namely whether, given its size and resources, the respondent acted reasonably in implementing the claimant's dismissal for the reason it held. This assessment should be made *'in accordance with equity and the substantial merits of the case'*. The onus is neutral in establishing whether this is the case.

56. It is found that the respondent satisfied this statutory requirement in these claims. That conclusion is supported in general by the following:

    a. The respondent undertook collective consultation with employee representatives;

    b. The employee representatives were allowed input into decisions taken about pooling and scoring of redundancy candidates for selection purposes;

    c. For the more detailed reasons given below, the pooling and scoring approach was reasonable;

d. There were individual consultation meetings – an initial meeting and a follow up meeting if desired;

e. The claimant's many queries throughout the process were answered;

f. They were offered the right of appeal against their dismissal.

Pooling and scoring

57. The question of how to pool potential redundancy candidates is largely one for the employer in question and the scope for an employment tribunal to interfere in that is limited.

58. In ***Capita Hartshead Ltd v Byard [2012] IRLR 814*** Silber J described the role of the tribunal as follows:

> *'It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted' (per Browne-Wilkinson J in Williams v Compair Maxam Ltd [1982] IRLR 83 [18]);*
>
> *…*
>
> *'There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem' (per Mummery J in Taymech Ltd v Ryan [1994] EAT/663/94, 15 November 1994, unreported);*
>
> *'The employment tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has 'genuinely applied' his mind to the issue of who should be in the pool for consideration for redundancy; and that*

'Even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.'

59. Therefore it may be the case, and often is, that employees could be pooled in more than one way, each justifiable on its own merits. Provided the employer adopts one of those reasonable approaches, the fact that an affected employee would prefer a different pooling approach does not in itself render the employer's actions unfair.

60. A similar approach must be taken to the employer's chosen process for assessing and ranking affected employees.

61. Selection criteria and the basis for scoring should be clear and unambiguous. They should be objective as far as reasonably possible, with reference to supporting evidence rather than subjective opinion. The four key criteria chosen by the respondent were adequate to meet those requirements. They were each evidence based and either completely objective, or at least not capable of distorting the exercise to the extent that a degree of judgment was provided, such as in relation to assessing multi-site and multi-disciplinary experience. They appear relevant given the needs of the respondent's business at the time and going forward. So, for example, they recognised the benefit in employees having breadth of experience and skills when the overall size of the staff would reduce. They recognised each employee's performance against the most recent available common benchmark, namely the last annual appraisal. Further, each employee had the opportunity to contribute and to ensure no important details were missed by completing the template profile form.

62. The scoring process was adopted across all hotels within the respondent's company group at that time. As such they were formulated without specific reference to the claimant. They could not have been devised with the purpose of putting her at a disadvantage.

63. There is no indication of bias in the scores which were attributed to the claimant, either in themselves or by comparison to any other person. The

claimant in cross examination of Ms Dickie only raised one query, namely why a particular colleague had scored more than her in the category relating to breadth of experience and skills. Ms Dickie was able to explain why, with reference to that person's career history, they had wider experience than the claimant and so had been given a higher score. At that same time that person had been scored down elsewhere because they had a live disciplinary warning.

64. The law is clear that, provided the selection criteria adopted are objective and contain no obvious bias, and that they have been applied in a reasonable fashion, an employment tribunal should not excessively scrutinise them – ***British Aerospace plc v Green 1995 ICR 1006 CA.***

Individual consultation and exchanges between the claimant and the respondent

65. When assessing the fairness of an employer's redundancy process it can also be relevant to consider the way the employee participated in it.

66. The claimant engaged extensively with Ms Sum, her employee representative, and Ms Dickie over a range of matters relating to the process. Her queries were answered. She was not reticent in raising queries or concerns as the occurred to her. She challenged very little about the process. She asked to be pooled separately, although withdrew that request. She did not dispute her score or the criteria themselves. She waived the option of a second consultation meeting and requested to be made redundant on the terms offered. She did not appeal her dismissal.

Allegation of bias in the scoring exercise

67. The claimant alleged in the hearing that she was the victim of bias against her on the part of Ms Seisdedos. She said that the working relationship between the two had been strained and believed this influenced how she was scored. However, if she believed that genuinely to be the case she did not raise it during the redundancy process. She accepted her score and waived

the option to have a second consultation meeting. There is no evidence beyond the claimant's own statement of belief that any bias existed or affected the outcome of the scoring process. No example of the claimant being unduly harshly scored (or a colleague being scored more generously) was given. The claimant's score was equal or close to that of many of her colleagues. The criteria and weighting system had not been devised by Ms Seisdedos – they had been formulated and adopted at the respondent's group level. Ms Seisdedos was only one of three assessors, and the claimant did not suggest that either of the other two were biased.

Rooms Controller role

68. By her own admission the main complaint the claimant had with the respondent's actions was that she was not offered the option of taking up the Rooms Controller role which was created in November 2020.

69. Whilst it is well established that an employer should assist an employee at risk or redundancy by considering alternatives to dismissal, including alternative roles which may exist, that obligation only endures while the employment relationship is in place.

70. On the facts of this claim, the Rooms Controller role was only conceived in mid-November 2020 when Mr Nesbitt was considering the consequences of having to remove the whole Resort Sales team. By that time the claimant had left the respondent's employment.

71. Furthermore, there would have been no outright obligation on the respondent to offer the role to the claimant on an uncontested basis even if they had thought of her in connection with it. Firstly, part of the rationale for creating the role was to retain skills which the Resort Sales staff had but no other employees did. It would defeat the purpose somewhat to give the role to the claimant who by her own admission would have to train on the systems and procedures in question. Secondly, the Resort Sales staff themselves were all

at risk of redundancy and there was no obvious reason why they should not have been given the same opportunity as the claimant to apply for the role.

72. Accordingly, even if the respondent had been obliged to go back to the claimant after her dismissal to explore whether she was interested in the role (or had decided to do so anyway) it is too speculative an assertion to make that the claimant would have secured the role. Indeed, there would have been nothing to stop the claimant from applying for the role when it was advertised.

73. Therefore the claimant's dismissal was not rendered unfair by virtue of not being offered, or made aware of, the Rooms Controller role personally by the respondent.

Money claims – lying time wages and locker deposit

74. The claimant alleges that she effectively worked her first week of service in advance, so that throughout her service with the respondent she was paid in arrears by one week. This she said had the effect that on the termination of employment she was due a further week of pay representing lying time.

75. She also maintained that she had paid a deposit of £10 for the key to the locker she used at work. As she had returned her locker key once her employment ended, she was due that money back. She could not recall with any clarity when she had paid the money, but she remembered signing an HR form.

76. Ms Dickie explored whether there were any records to support the claimant's assertions, but found none. Ms Dickie had worked at the hotel for 10 years. She spoke to Ms Jackie Gates, the Director of HR who had worked with the respondent before she herself had, to see if Ms Gates had any recollection of the practice. She did not.

77. None of the documents provided by the parties directly established whether either of these terms existed as part of the claimant's contract.

78. Dealing first with the lying time claim, it is found that no such entitlement existed by the time the claimant's employment ended. Whilst it may have been an arrangement at the beginning of her service in the early 1990's it is found on the balance of probability that any such practice, had it ever existed, had been superseded as part of one of a number of contractual changes made over the subsequent years. Since her initial statement of terms and conditions of employment was issued [R46] she received numerous letters documenting the changes to her role, which were frequently to do with her rate of pay and entitlement to notice specifically. A particular example of that is an updated statement of terms and conditions which she countersigned on 14 May 1997 [R53-59] which clearly states how monthly pay would be calculated. Similarly, she received a letter on 19 March 2003 confirming that she would move to monthly payment of her salary, and explaining which dates each monthly payment would cover [R71]. The terms of that letter are inconsistent with any arrangement for lying time. It is unlikely that a lying time arrangement would have survived for the duration of the claimant's employment without ever being referred to when pay and similar terms were being specifically addressed, sometimes in a way that suggested otherwise.

79. By contrast it is found that the claimant was entitled to reimbursement of her locker key deposit. Although that might seem inconsistent with the findings in relation to the lying time claim, the two are not completely comparable. First, the nature of the entitlement to the deposit was one which was simpler in nature and more clearly and convincingly recalled by the claimant than any purported entitlement to lying time. Second, it is more likely to have existed as a local arrangement or one which was not provided for in the template statements of terms and conditions which the respondent used from time to time. Thus, an absence of any specific reference to it was not so telling to the same degree. And thirdly, in any event there was reference to a locker key deposit in the 14 May 1997 statement of terms and conditions [R59]. Whilst the amount specified at that time was £5, the claimant's evidence was that the amount had been increased at a later date to £10. There was no evidence to point against the claimant's recollection, partially corroborated by this

document, and therefore on balance it is determined that she was entitled to be reimbursed £10 for returning her locker key.

Conclusions

80. Based on the evidence, including in particular the matters referred to above in paragraphs 1 to 6 under 'Findings of fact' it is determined that the claimant's correct employer was the company 'Hotel Corporation of Edinburgh Limited' and that is the correct respondent in this claim. 'Sheraton Grand Hotel and Spa', and variants of that, are merely trading names used by the employing entity from time to time.

81. For the reasons above, it is found that the claimant was dismissed by reason of redundancy and that the respondent conducted itself reasonably in all of the circumstances, given its size and administrative resources, in dismissing the claimant for that reason. She was not unfairly dismissed and that claim is refused.

82. As a result it is not necessary to review further the matter of the claimant's post-termination losses or calculate compensation.

83. There is no evidence beyond the claimant's own recollection to support her claims for sums in relation to lying time and considering the evidence on balance this claim is refused.

84. The claimant has established on the evidence that she was entitled to be reimbursed £10 by way of a locker key deposit, and therefore the respondent was in breach of her contract by not paying it back to her. It is now ordered to do so.

Employment Judge: Brian Campbell
Date of Judgment: 20 July 2021
Entered in register: 22 July 2021
and copied to parties