



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Nazmul Hussein

**Respondent:** Westminster Bangladeshi Welfare Trust

**Heard at:** London Central

**On:** 27, 28 February, 1, 2 March and 20 April 2017

**Before Judge:** Employment Judge Davidson

**Members:** Mr M Simon  
Ms S Plummer

**Representation:**

Claimant: Miss N Rafique, Advisor

Respondent: Mr R Hanstock, of Counsel

## RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the Claimant's complaint of automatic unfair dismissal on grounds that he was dismissed for having made a protected disclosure fails and is hereby dismissed.

Employment Judge Davidson

25 April 2017

# REASONS

## Issues

1. The issues in the case, as clarified at a case management discussion on 11 August 2016 and by the parties' representatives during the course of the hearing, were as follows:
  - 1.1. Did the Claimant make a protected disclosure within the meaning of the Employment Rights Act 1996:
    - 1.1.1. in his meeting with Councillor Nickie Aiken on 2 November 2015 or
    - 1.1.2. in his email to Councillor Jacqui Wilkinson dated 28 January 2016?
  - 1.2. If so, was the protected disclosure the sole or principal reason for his dismissal?

## Evidence

2. The tribunal took into account the following evidence:
  - 2.1. oral evidence from the Claimant, Councillor Jacqui Wilkinson (Westminster City councillor) and Mr Abdus Subhan (formerly Secretary of the Respondent) on behalf of the Claimant and from Mr Shaista Miah (Chairman of the Respondent), Mr Chunu Miah (Treasurer of the Respondent), Mr Amirul Islam (Committee Member of the Respondent), Mr Mohammed Shahjahan (Vice-General Secretary of the Respondent) and Mr Rezaul Islam Chowdhury (Executive Member of the Respondent) on behalf of the Respondent.
  - 2.2. The tribunal read witness statements from Mr Abdur Rahim (Vice-Chairman of the Respondent) and Councillor Nickie Aiken (Westminster City Councillor) but neither of these witnesses attended the hearing and their witness statements were given little weight as their evidence had not been tested in cross examination.
  - 2.3. The tribunal also had before it an agreed bundle of documents with some additional documents being introduced with the leave of the tribunal during the hearing.

## Facts

3. The tribunal found the following facts on the balance of probability:

- 3.1. The Respondent is a charity based in Pimlico concerning itself with the welfare of the local Bangladeshi community. It is part funded by Westminster City Council. There is another connected charity (VICEC) which is primarily concerned with the establishment and running of a mosque in the area. The chairman of the Respondent and the General Secretary of VICEC is Mr Shaista Miah. The treasurer is Mr Chunu Miah (no relation).
- 3.2. The Claimant was employed by the Respondent from 16 September 2014. He also provided services during his working hours for VICEC after that organisation was established. He worked as an administrator, working 10am – 4pm, four days a week and he dealt with all written correspondence which needed to be in English, including some personal correspondence for committee members. The office was contained within a small area and the Claimant would be aware of any conversations taking place within the office. Some private conversations took place in an adjacent room (although this room did not belong to the Respondent).
- 3.3. In November 2014, a cheque was stolen from the Respondent's cheque book and drawn on the Respondent's account in the sum of £12,300 and cashed at a branch of Santander. The theft came to light in late June/early July 2015 when the Respondent's auditors were reviewing the bank accounts and preparing the annual financial statement. Despite the sum being larger than most cheques drawn on the account, and the debit having a significant impact on the bank balance, it had not been noticed within the organisation.
- 3.4. There was a dispute regarding whether Shaista Miah took appropriate steps on learning about the stolen cheque. We find that, on the balance of probabilities, Shaista Miah told the bank and the police about the theft of the cheque. We accept Shaista Miah's evidence that he was given a reference number by the police and also a crime number by the nationwide fraud hotline. The Claimant relies on the absence of any police visit and the absence of minutes of a meeting discussing the issue as evidence that the matter was not reported. We do not find this conclusion to be reasonable.
- 3.5. Shaista Miah asked the Claimant to write a letter to the Charity Commission informing them of the theft. The version of the letter submitted in evidence to the tribunal is dated 23 July 2015 but the Claimant alleges that it was written in September but backdated to July and that he was told not to send it but to keep it in a drawer in case it was needed at a later date. The Respondent denies this and states that it was the Claimant's role to put correspondence in the post. We note that the Claimant did not mention this issue at the time in his email exchanges with Jacqui Wilkinson. It is clear from the subsequent correspondence that the Charity Commission did not receive this letter but we make no finding as to the reason for this.

- 3.6. Ultimately the bank repaid the amount of the cheque after the intervention of the Financial Ombudsman.
- 3.7. Jacqui Wilkinson was elected as a councillor for the Pimlico area and she lived close to the Respondent's premises. She therefore frequently dropped in and took an interest in the Respondent and VICEC, with a particular focus on the organisation's governance and the need to appoint external trustees. She met with Shaista Miah and discussed these matters, making recommendations and expressing her concern about the potential for radicalisation. Although the Claimant was not part of this meeting, he was aware that it was taking place and what was being discussed.
- 3.8. Following this meeting, the Claimant approached Jacqui Wilkinson and began a chain of correspondence and meetings with her in which he expressed his concerns about the financial management of the Respondent and VICEC, the inter-relationship between them and the use of public money. The Claimant provided Jacqui Wilkinson with documents to back up his concerns. Jacqui Wilkinson then arranged for the Claimant to meet another Councillor, Nickie Aiken, who was a more experienced councillor and a member of Public Protection Committee of Westminster City Council.
- 3.9. This meeting took place on 2 November at a local coffee shop. The Claimant relies on this meeting as the First Disclosure. The Claimant raised concerns about financial matters (including the fact that Shaista Miah did not appear to be taking the cheque issue seriously) and extremist interpretations of the Koran being expressed at meetings and in front of children. Nickie Aiken mentioned the radicalisation issue to the Council's Prevent officer but told the Claimant that he should inform the police if he had concerns about the theft of the cheque.
- 3.10. Following his meeting with Nickie Aiken, the Claimant and Jacqui Wilkinson continued to correspond by email, text and in person and the Claimant passed on various items of information to her and made various allegations about financial misconduct including information regarding the cheque. There were numerous emails which also included confidential information about members of the community, private arrangements with local dignitaries and public officials and the Claimant's thoughts about a women's group which was not part of the Respondent but organised by the women in that community. These communications included an email of 28 January which the Claimant relies on as his Second Disclosure in which the Claimant told Jacqui Wilkinson that the Board was divided on the issue of the lost cheque and that they were blaming each other. He also told her that a 'huge amount' had been misappropriated from VICEC by paying a contractor in cash, which he alleged was to avoid VAT on the contractor's invoice.

- 3.11. We were shown a document which was referred to as the 'Madrassa document', a 'To Whom It May Concern' note relating to the request for donations for a madrassa (religious school) in Bangladesh. The Respondent alleges this was drafted maliciously by the Claimant with a view to implicating Chunu Miah in wrongdoing because the document supposedly had two signatories but the two names were alternative names for Chunu Miah and so the document effectively was authored and signed by only one person. Having considered the evidence, we find, on the balance of probabilities that in early February 2016, Chunu Miah asked the Claimant to draft the document for him to use at the Friday prayers in support of his fundraising drive. We find that the detail within the letter suggests that Chunu Miah was involved and we do not consider that the Claimant would have any reason to draft such a letter otherwise. We find that the Claimant was aware that both names were aliases of Chunu Miah but that he did not raise this with Chunu Miah. We find that the Claimant gave two copies of this document to Chunu Miah and that he put a copy through Jacqui Wilkinson's letterbox.
- 3.12. On 17 February 2016 Chunu Miah's son Amire Miah was in the office. We find that he accessed the Claimant's computer and found copies of the emails the Claimant had been sending to Jacqui Wilkinson (even though these were from the Claimant's private account) and saw what documents he had disclosed to her. The Claimant was unaware that Amire Miah had discovered this although he noticed something strange with his computer. We did not hear evidence from Amire Miah and we were unable to reach a finding how he came across the Claimant's personal emails.
- 3.13. Amire Miah also came across a document written by the Claimant entitled 'Brief on Islamisation' which does not mention the Respondent specifically but the Claimant draws on his experience working for the Respondent in reaching conclusions about the risk of radicalisation.
- 3.14. On the following Monday, 22 February 2016, the Claimant and Shaista Miah went to a local mosque for daily prayers as they did most days. Amire Miah was in the office but did not go to prayers with them. We find that the Claimant left his phone behind in the office, not locked away. After the Claimant and Shaista Miah had returned from prayers, they were in the office with Amire Miah and another member of the board. While purportedly looking for some stationery, Amire Miah opened the Claimant's desk drawer and found the two documents there (the Madrassa document and the Islamisation brief). The Claimant states that they were not in the drawer before he went to prayers. The Claimant was confronted about the documents and was suspended with immediate effect. We find that this event was stage managed by the Respondent so that further wrongdoings would be added to the allegations regarding breach of confidentiality.

- 3.15. The Claimant gave in his keys and left the office immediately. He was walking away from the office when Jacqui Wilkinson drove past. She stopped and asked why he looked so distressed. Just before seeing the Claimant on the street, she had seen a text message on her phone which appeared to come from his phone while she was driving but had not looked at it until she had stopped. She then read the message. It referred to his job 'being done' and asking for '400 as agreed'. He told her what had happened with his suspension and she asked about the text message. He said he knew nothing about the text message and showed her his phone which had no such text message showing. We find that this message was not sent by the Claimant. He suggested that Amire Miah had the technical ability to send the message from his phone and then delete it while he was at prayers but we did not hear from Amire Miah so we reach no conclusion on that point
- 3.16. We find that the Claimant considered that he had been dismissed on 22 February. He returned his office keys and he told Jacqui Wilkinson that he had been dismissed. He was subsequently invited to a disciplinary hearing which he did not attend. He was dismissed for gross misconduct in his absence on 9 March 2016.
- 3.17. After informed being informed of his dismissal, he sought clarity of the reasons for the dismissal. We find that the Respondent was evasive and failed to provide a reasoned explanation until it did so as part of these proceedings.
- 3.18. After the Claimant's employment had been terminated, there was a split within the Respondent's community arising from a difference of opinion about the appointment of a new Imam. This led to a number of board members losing their position and subsequently writing a letter to the Charity Commission dated 4 April 2016 making a series of allegations about both the Respondent and VICEC which mirrored the concerns which had been raised by the Claimant. One of the signatories to that letter was Chunu Miah but he later retracted and withdrew his allegations. The Claimant was not involved in this dispute but he relies on the contents of the letter to reinforce the validity of his concerns.

#### Law

4. The relevant law is contained in sections 43A-43L and section 103A of the Employment Rights Act 1996 and can be summarised as follows:
  - 4.1. A qualifying disclosure is a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the designated types of wrongdoing set out in section 43(1) ERA. These include information that a criminal offence has been, is being, or is likely to be committed and information that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

- 4.2. Section 43G provides that a qualifying disclosure made to a third party will be a protected disclosure if the worker reasonably believes it is substantially true, it is not made for personal gain, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes the disclosure to his employer and, in the circumstances, it is reasonable to make the disclosure to the person to whom it was made.
- 4.3. Section 43H provides that a qualifying disclosure made to a third party regarding an 'exceptionally serious failure' will be a protected disclosure if the worker reasonably believes that it is true, it is not made for personal gain, the relevant failure is of an exceptionally serious nature and in the circumstances, it is reasonable to make the disclosure to the person to whom it was made.
- 4.4. A dismissal on grounds that the employee has made a protected disclosure is automatically unfair (section 103A ERA).
- 4.5. The burden of proof is on the Claimant to show he made protected disclosures and that he has been dismissed; it is then for the Respondent to show that the reason for the dismissal was a reason other than the disclosures.

#### Determination of the Issues

5. We determine the issues as follows:
  - 5.1. We find that the Claimant made a disclosure of information to Nickie Aiken and Jacqui Wilkinson which he reasonably believed was true, was in the public interest and that he thought it tended to show a criminal offence or a breach of legal obligation. We find that he did not make the disclosure for personal gain. We do not find that the disclosure related to an exceptionally serious failure.
  - 5.2. We find that the Claimant reasonably believed he would be subjected to a detriment if he disclosed his concerns to his employer.
  - 5.3. In relation to the meeting with Nickie Aiken (the First Disclosure), we find that it was reasonable for him to make the disclosure to her as a local councillor.
  - 5.4. In relation to the first paragraph of the Second Disclosure, we find that it was not reasonable to make the disclosure to Jacqui Wilkinson regarding the matter of the cheque. The Claimant had been told previously that any complaint should be made to the police. The content of the disclosure is of a gossipy nature and the new information about the cheque is that the members of the Board were blaming each other and the disclosure is a report of the internal politics of the organisation.

- 5.5. In relation to the second paragraph of the Second Disclosure relating to the payment to a contractor of cash, we find that the Claimant had a genuine belief that this amounted to a wrongdoing, albeit that this belief was mistaken. We find that it was reasonable for him to disclose the information to Jacqui Wilkinson as they had built up a relationship and she had shown interest in the organisation which led to the Claimant perceiving that she was a person of authority who could be trusted.
- 5.6. We do not find that the First Disclosure was the reason or principal reason for the dismissal. We find that the dismissal was partly, but not substantially, due to the fact that the Claimant had met with Nickie Aiken. However, the Respondent could not have known what the content of the meeting was. The Claimant contends that it was apparent from the context of the various emails but the subject matters of the emails was so wide-ranging, the Respondent would not have known which matters were discussed.
- 5.7. We do not find that the Second disclosure was the reason or principal reason for the dismissal. We find that the dismissal was on the grounds of the totality of the communication with Jacqui Wilkinson which had come to light, the majority of which was not relied on as a qualifying disclosure and much of which related to matters which were not relevant to the disclosures relied on and are therefore not part of the 'contextual basis' relied on by the Claimant. We find that this breach of confidence was the reason for dismissal. We find that Shaista Miah wanted to have a good working relationship with the councillors and therefore was angry about the Claimant's unauthorised contacts with them and the breaches of confidence which he felt undermined him and the organisation and unfairly portrayed them in a negative light. We reject the Respondent's contention that the reason for dismissal was the Madrassa document and the Brief on Radicalisation.

### Conclusion

6. In conclusion, the Claimant's complaint of automatic unfair dismissal on the grounds of having made a protected disclosure fails and is hereby dismissed.

Employment Judge Davidson

Date 25 April 2017