



EMPLOYMENT TRIBUNALS

Claimant: DEBBIE JAMES

Respondent: UNINTERRUPTIBLE POWER SUPPLIES LIMITED

Heard at: Southampton On: 27, 28 and 29th March 2017
Employment Tribunal

Before: Employment Judge M. Salter

Members: Mr. P. Bompas
Mrs. K.G. Symonds

Representation:
Claimant: In person.
Respondent: Miss. R. Morton of counsel

JUDGMENT

It is the unanimous judgment of the tribunal that the Claimant did not make protected disclosures nor was she dismissed for health and safety reasons accordingly her claims fail and are dismissed.

REASONS

Introduction

1. These are the reasons of the tribunal given orally at the final hearing on Wednesday, 29 March 2017. These written reasons are provided at the request of the Claimant.

Background

The Claimant's case as formulated in her ET1

2. The Claimant's complaint, as formulated in her Form ET1 presented to the tribunal on 21 June 2016 [1] and in a subsequent letter from her dated 26th June 2016 [19] is, in short, she was dismissed because she made two protected disclosures (commonly known as "whistleblowing") and that these were also health and

safety matters and she was dismissed because she brought to her employer's attention by reasonable means circumstances connected with her employment which she reasonably believed were harmful or potentially harmful to health and safety.

The Respondent's Response

3. In its Form ET3, the Respondent accepted that the Claimant was an employee and that she was dismissed, however it denied that the reason, or if more than one reason, the principal reason for the Claimant's dismissal was her protected disclosures or health and safety matters, rather it claimed the claimant was dismissed owing to a loss of trust and confidence between it and her.
4. There has been no application to amend the claim or response by either party since the presentation of their claims/responses.

Case Management to date

5. There have been two Preliminary Hearings in this matter. The first was heard by Employment Judge Roper on 14th November 2016 [39] during which a list of issues was produced. The Claimant appeared in person and the Respondent was represented by Miss Gair, solicitor. At this Preliminary Hearing a three-day final hearing was listed for Monday, 27th to Wednesday 29th March 2017 and E.J. Roper, with the parties, identified the list of issues as being:

The Issues

- i.6. The Employment Judge recorded that the issues between the parties which will fall to be determined by the Tribunal are as follows:
 - ii.
 - iii. **7. Unfair dismissal claim – health and safety**
 - 7.1 What was the reason for the dismissal? The claimant relied on section 100(1)(c) of the Act. Was the reason for the dismissal (or if more than one the principal reason) because the claimant brought to her employer's attention by reasonable mean circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety?
 - 7.2 Was this must (sic) be in circumstances where she was an employee at a place where there was no health and safety representative or safety committee, or that there was such a representative or safety committee but it was not reasonably practicable to raise the matter by those means? The claimant has confirmed that there was a

health and safety representative, but that the complaint was raised to others within the respondent company including the finance director.

7.3 The Respondent asserts that the claimant was dismissed because of an irretrievable breakdown in working relationships.

8. Public Interest Disclosure

8.1 What did the Claimant say or write? The claimant relies upon her grievance against Miss Cutting, which she says was raised verbally in April 2015 and then by way of written grievance on 16 September 2015.

8.2 In any or all of these, was information disclosed which in the Claimant's reasonable belief tended to show one of the following?

8.2.1 The respondent had failed to comply with a legal obligation to which it was subject

8.2.2 The health and safety of any individual (namely the claimant) had been put at risk

8.3 If so, did the Claimant reasonably believe that the disclosure was made in the public interest?

8.4 If so was the disclosure made to the respondent her employer?

Unfair dismissal complaint – Public Interest Disclosure

8.5 Was the making of any proven protected disclosure the principal reason for the dismissal? The Claimant did not have at least two years' continuous employment, and accordingly, the burden is on the Claimant to show jurisdiction and therefore to prove that the reason or if more than one the principal reason for the dismissal was the protected disclosure(s)

8.6 If not, does the tribunal accept the reason put forward by the Claimant or does it decide that there was a different reason for the dismissal? The Respondent asserts the Claimant was dismissed because of an irretrievable breakdown in working relationships.

6. It is notable that the claims are identified as unfair dismissal claims and the sections of the Employment Rights Act 1996 ("the 1996 Act") are the unfair dismissal sections.

7. The second Preliminary Hearing was heard on 10th February 2017 before Employment Judge Wright who considered various matters including the admissibility of certain documents which the Respondent successfully argued were covered by the without prejudice rule. The Claimant represented herself and this

time the Respondent was represented by Ms Morton of counsel. Of note is paragraph 18 of the Order which states:

As a final observation, the issue for the Tribunal to determine is did the Claimant make a protected disclosure and/or make health and safety assertions and if so, was that the reason (or if more than one the principal reason) for her dismissal? The Claimant needs to show a causal link between the disclosures and the dismissal. The respondent contends the reason for the dismissal was a breakdown in the working relationship between the Claimant and her colleagues. The parties are expressly referred to the Case Management Summary of 14/11/2016 where the issues have been identified and they are advised to focus on those issues only.

8. EJ Wright's Order was sent to the parties on the 24th February 2017.
9. Neither the Order made by EJ Roper nor that of EJ Wright were reviewed or appealed by either party.

The Final Hearing

10. Pursuant to the Preliminary Hearing Orders the matter came before us for Final Hearing.
11. The matter was called on at 1000 on the morning of the first day. The Claimant continued to represent herself and the Respondent was again represented by Ms. Morton of counsel.
12. Although assistance was given by the Tribunal to the Claimant in the form of explaining the procedures of the tribunal, the law and reformulating questions on her behalf it was not felt appropriate for the tribunal to conduct the Claimant's case for her and to cross-examine the Respondent's witnesses on her behalf. The tribunal explained this to the Claimant at the outset of the first day's hearing.
13. The tribunal and parties discussed how the hearing would be conducted. The tribunal recognised that the Claimant might require some latitude in terms of time for cross-examination, when giving evidence and generally in the presentation of her case, bearing in mind that she is a litigant in person. Time estimates for cross-examination were discussed, it was hoped that we would have finished the

evidence of the Claimant, Mr Jones and Ms Packham on behalf of the Respondent by the end of the first day's hearing.

14. Somewhat surprisingly, the Claimant told us she had not prepared for the hearing. The matter however proceeded, there being no application to adjourn. The tribunal took from 1045 until 1230 to read the witness statements of all witnesses and the documents referred to therein.
15. Despite our intentions, we were unable to complete the evidence of three witnesses on the first day as Mr Jones was still in the process of giving evidence at the end of the first day. The tribunal rose at 1615.
16. The second day commenced at 1000 with the tail end of the evidence of Mr Jones. We were then able to finish the remaining witnesses on behalf of the Respondent by 12:30. After an early lunch the Respondent made closing submission from 1330 until 1415, when again a short break was taken to provide the Claimant with additional time to compose any submissions she had in response to those she had just heard from the Respondent. At 1440 the Claimant commenced her submissions. It was clear that these were distressing for her and so the Tribunal offered to copy the written submissions the Claimant was reading from and read them instead of the Claimant to read them out herself. After the submissions were copied the EJ, with the Claimant's agreement, read the submissions aloud for the benefit of all persons present in the tribunal. the hearing finished around 1530 and the parties were released until not before 1300 on Wednesday, 29 March 2017 to provide the tribunal with time to consider its decision.

Documents and Evidence

Witness Evidence

17. The tribunal heard evidence from the Claimant on her own behalf.
18. The Tribunal also heard evidence from the following witnesses on behalf of the Respondent: Mr. Paul Jones, the Respondent's Finance Director, Ms Dawn Packham, the Respondent's Senior Human Resource Generalist, Diane Thomas a Service Sales Engineer with the Respondent and Mrs. Natalie Hayes an Assistant Accountant with the Respondent.

19. All witnesses gave evidence by way of written witness statements that were read by the tribunal in the morning of the first day of the time allocated and in advance of them giving oral evidence. All witnesses were cross-examined.

Bundle

20. To assist us in determining the matter we have before us an agreed bundle consisting of some [231] pages. Our attention was taken to a number of these documents as part of us hearing evidence and, as discussed with the parties at the outset of the hearing we have not considered any document or part of a document to which our attention was not drawn. This judgment refers to this bundle by reference to the relevant page number.

Submissions

21. We had written closing submissions from the Claimant. Both parties made oral submissions as well, albeit for the reasons given above, the Claimant's oral submissions were shorter than those of the Respondent. Since the Claimant's helpful submissions are in writing it is unnecessary to repeat them here and they are referred to as appropriate in the conclusions.

The Material Facts

22. From the evidence and submissions we made the following findings of fact. In this decision we do not address every episode covered by that evidence, even where it is disputed. Rather, we have set out our findings that we consider to be necessary in order to fairly determine the claims and the issues to which they give rise.
23. The Claimant was an employee of the Respondent. She was employed as Credit Manager. She was employed on 28th April 2014 until her immediate dismissal on 7th April 2016 [4 §5.1], [23 §4.1] and [221]
24. The Respondent designs, implements and supports uninterruptable power supply and total protection systems across the UK [29 §2] it is a subsidiary of an American company Kohler.

25. The Respondent has a small finance team totalling seven employees of which the Claimant was one. The Claimant had one immediate report namely Mr. David Mathews (Mr. Mathews). The other members of the finance team reported to Ms Carol Cutting (Ms Cutting). Both Ms Cutting and the Claimant reported to Mr Paul Jones ("Mr. Jones") the Finance Director.
26. Mr Jones' role involved a lot of travel including to the USA, he was, therefore, not always in the office. On these days the Claimant and Ms Cutting effectively ran the finance team.
27. Initially things went well between the Claimant and Ms Cutting, however after a six-month "honeymoon" the relationship soured and the Claimant began to experience what she alleges was bullying and harassment by Ms Cutting.
28. In April 2015 the Claimant decided to speak to Dawn Packham ("Ms Packham"), the Respondent's HR Generalist, about the concerns she had over Carol Cutting's behaviour. Ms Packham did not take a record of this conversation as she said the claimant wanted it to be an "off the record" discussion. We find Ms Packham to be telling the truth about this, as contemporaneous support for this assertion can be found in an email the Claimant sent to David Renton the Respondents Managing Director on 24th April 2015 [100] and also later in the Claimant's grievance [194] where the Claimant refers to the conversation as being one "off the record". The only record of this conversation is therefore contained within the 5 bullet points set out in the Claimant's grievance on [122]:
 - As I said to David, I made it 100% clear to Dawn that I did not want to do anything with the info I discussed with her an then just wanted her to be aware in case anything escalated and that currently "I could handle it" – the issues were more around the other in Finance esp Aneta upset an in her condition.
 - Carol Treats staff differently – make obvious favours some over others
 - Extremely negative – WEEKLY states "that's s-it I'm leaving" – extremely de-motivational for her team and everyone else hearing it!

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- RUDE – eg on Tuesday Paul wasn't in. I came into work and asked Nat if it was Paul's birthday today. She wasn't sure and said to ask Carol as she knew all about whose birthday it was. I went and asked Carol "Carol, is it Paul's birthday do you know?" She shouted at me "I don't know! I know his FU***ING secretary!!!" then stormed out of the office. Everyone in Hardware was staring over and smirking. Very embarrassing for me and very unprofessional. She is ok generally 80% of time, other 20% she jumps down throats, is negative.
 - Diane and Carol did not speak/hated each other for years and team advised me was awful to work here previously and that the team worked in silence whilst 2 managers did not speak to each other.
29. On 15th September 2015 Ms Cutting swore three times as a result of an enquiry made by the Claimant. All parties accept this incident took place. The Claimant entered a grievance concerning this action dated the 17th September 2015 [120]. The grievance was focused on this incidence of swearing but did, towards the end, raise other instances of Ms Cutting's conduct towards other members of staff as well as the Claimant when the grievance sets out the matters the Claimant had raised in her discussion with Dawn Packham in April 2015 [see the bullet points set out above, and on 122].
30. The gravamen of the complaint appears to be the top of [123]:
- "I would like for myself, for my Finance colleagues and for all internal and external customers to be treated with respect by Carol. I would like for anyone not to be afraid to approach Carol to discuss any matter and I would like Carol to treat all her staff the same and act professionally and appropriately at all times to me and to others."
31. The Respondent investigated this grievance and interviewed the Claimant along with other members of staff [129]. The Respondent did not, however, comply with the time limits set out in its grievance procedure [115] that the outcome would "normally" be responded to within 5 days of the meeting. We find as a fact that this was not down to any ulterior motive such as a lack of interest or involvement by the Respondent: we have heard that the Respondent interviewed members of staff and was understandably careful about the nature of the investigation. The Claimant chased this by way of email on 23rd October 2016 [138].

32. In the interview the Claimant, we note, asks that the outcome of her grievance be that “we both put it behind us and we treat everyone equally, professionally. We all give positive view of finance.” [135]
33. On the 26th October 2015, the Claimant’s grievance was substantiated “in the main” [139]. The grievance outcome letter also identified other steps that both the Claimant and Ms Cutting could take to help develop the finance team and their working relationship. These “may” include three-way meetings, discussions, commitments and “potentially” external mediation.
34. The Claimant did not appeal the grievance outcome.
35. By the time of the outcome letter Ms Cutting had been disciplined for her conduct for which she received a Final Written Warning and was placed on a 12-month action plan. The Respondent did not delay in taking such action.
36. After the grievance outcome had been provided and the disciplinary action imposed we find that the Claimant was not prepared to let the matters go. The account that the Claimant was providing of events in the officer differed from the experience of the Respondent themselves. Mrs Hayes told us that Ms Cuttings behaviour did change, almost going over the top and being overly friendly, whilst Ms Packham told us that there were no complaints received about the conduct of Ms Cutting after the disciplinary action.
37. For instance, the very next day after the grievance outcome the Claimant sent the email on [143] reporting:

...today Pam had a whispery meeting with Carol. Think was possibly re her daughter on the odd word I heard, so I was considering whether to let this “pass” but not doing much for Glasnost as was a point I specifically asked to be mentioned to Carol.

Also, Carol had a meeting downstairs with all her team today. This left me on my own out here in Finance manning phones etc with no idea where they were going/how long for. Nothing was mentioned to me re them having a meeting etc., which was discourteous at best.

Thought a little early to let these things slide, but will continue to keep a log of tse thing as they occur (until I move desk!).

38. Four days after the grievance outcome is notified to the Claimant, on Friday, October 30th at 4:01pm, the Claimant contacts the Mr. Jones by email [142] and states:

Was wondering if you had finalised your plans assuming Carol/you would not Carol to move (sic), I would like to move desks for me and Paul Preferably Monday (assuming easy to do ourselves which looking under my desk it may not be) or by Thursday latest.

My general feeling is that tings within Finance as a whole have deteriorated recently in that certain people seem to believe they are required to choose a "side", so it would be good to understand how the general situation can be addressed.

I have spoke to Paul in principal and he is fine with our desk move.

I would propose I move to Dawn's old desk and Paul to the desk closets to me (ie where Luke is currently sitting) if you agree?

39. Within 11 minutes Mr Jones replies:

I understand you point and I have said I a dealing with it.
I do not find it helpful you feel the need to keep pushing this, Monday, not really a good idea, day 1 of month and no time to plan discussion how we would reorganise the office, not just for you.

On the general point, taking sides, they really disappoints me (sic), what do you base that on?

Do you thing you and Paul moving away into a silo will help that and be the answer then?

Lets discuss on Monday.

40. And then on the 6th November the Claimant emails [143 at top]

Sorry, just an update: as previously detailed, it's really much worse out here in the last few weeks.

I say good morning to Carol, no response (eg this morning). On the very rare occasions now that I try to talk to the others and even Dave, Carol shoots them a look (as just occurred with Dave) – I see them look at her, then they do not respond, turn around/go back to their work. Pam who

used to always be smiling and asking "how's it going", telling me bits and pieces, generally only talks to me on the way in now, rarely anything other than that.

I realise this all sounds crazy, it's kindergarten stuff, but it's reality out here and is as per my email of last Friday in that people are scared of Carol, scared to cross her and feel they need to overtly choose "a side".

I have always been conscious throughout this process that I was told by the whole team that they used to work I a "morgue" due to carol and Diane not speaking and I have a definite feeling it's returning to this again in that you can cut the atmosphere with a knife and I feel I am powerless to change this on my own.

41. On the 10th November 2015 the Respondent held a meeting between the Claimant and Ms Cutting (page 144 refers). In an email from The Claimant to Ms Packham prior to the meeting, the Claimant states "right now I can see no way that the rot is going to ever be reversed". As a result of this email Ms Packham and the Claimant met on the 12th November [147 refers]. In this meeting Ms Packham stated that she had spoken to other members of staff and they were telling her that things were "ok" ad that they would let her know if they had a problem. In this meeting the Claimant told Ms Packham that she (the Claimant) said that she believed Ms Cutting should have been dismissed and that she did not believe things would change.
42. It is telling, we think, that Mrs Hayes told the tribunal that it was then the Claimant who became introverted and would not speak when Ms Cutting was present but would do so when Ms Cutting was out, this corroborates the Claimant's own account of 11th November [145 at 146].
43. On 13th November the Claimant emailed Mr Jones [150], and on 16th November the Claimant met Mr Jones. The accounts of this meeting are diametrically opposed. The Claimant contends in her witness statement at paragraph 36 that Mr Jones immediately seemed angry and stated the Claimant had "ruined his weekend" by the email of 13th November, and berated the Claimant for using email to update him with notes she had made about Ms Cutting. Mr. Jones in his evidence denies his conduct during this meeting was as the Claimant alleges.

44. Doing as best as we can on the evidence before us on this point, we prefer the evidence of Mr Jones. By the time this meeting occurs we consider the Claimant demonstrating perhaps over sensitivity to situations that occur in the office, including Ms Cutting talking to other members of staff and holding meetings with her (CC's) team, and drawing we find unfounded inferences from these. Further, the language used in emails from the claimant demonstrate to us that she, far from her original expressed intent to want to move forward and work together, had an entrenched negative frame of mind about the relationship with carol, we find she took this mind-set into the meeting with Mr Jones who, we find, probably did tell the claimant there was little else he was able to do as the claimant kept coming to him with what he described as subjective complaints.
45. What is clear is that after the meeting no further email was sent to Mr Jones by the Claimant. Nor was any email sent to any other member of staff, including Mr Renton or Dawn Packham, by the Claimant complaining about Ms Cutting. We note from the Claimant's witness statement that she does not point to any other particularised incidences of complaint.
46. On 23rd December 2015 Mr Mathews suffered a heart attack and was absent from work. This caused the claimant to be understaffed as Mr Mathews was her only team member.
47. On 24th December 2016, the Claimant met Mr Jones, who instructed her to get a "temp" in to assist her with her workload that had increased with Mr Mathews' absence. The Claimant did not contact the agencies until 3pm in the afternoon, at which point they had shut for Christmas. Again, the Claimant complains about Mr Jones' conduct in various meetings over the course of that morning, again there is a dispute in evidence as to what happened in those meetings. The Claimant contends Mr Jones was "aggressive and angry and being very rude". In his evidence before us Mr Jones denied this. We prefer the evidence of Mr Jones in this regard who we found to be a credible witness on these matters, and whose account is consistent with the contemporaneous material we have seen. However, do accept that the claimant was suffering from an increased workload and at a

time when pressures of work were mounting owing to the time of year and the impending shut down and therefore was understandably stressed by the pressure of her workload.

48. Matters did not improve for the Claimant after the Christmas break and on 7th January 2016 she left work after suffering a migraine which led her to be unable to see her computer screen, she was short of breath and crying. Again the Claimant complains about Paul Jones behaviour. Again Mr Jones denies his behaviour was as the claimant describes. The claimant was signed off work unwell and did not return to work.
49. The Claimant and Respondent were in email contact concerning her absence and on 31st January 2016 the Claimant provided an email to the Respondent detailing her situation and outcomes sought [180].
50. A long-term sickness absence meeting was held on the 16th February 2016. This is described as a "review meeting" by the Respondent [184]. This is perhaps unfortunate and undoubtedly led to the Claimant's misapprehension of what was likely to occur at that meeting. In fact the formal Review process was not ever commenced in relation to the claimant as such a process begins on 13 weeks absence (see page [160]). Unbeknownst to the Respondent the Claimant was covertly recording this meeting, having, we are told, been advised by a solicitor to do so. We find that this is demonstrable of a lack of trust and confidence between Claimant and Respondent. In this meeting a large part of the discussion concerns, not the Claimant's health, but rather what the matters covered in her email of 31st January 2016 and the outcomes she sought for the situation between herself and Ms. Cutting.
51. After this meeting the Claimant remained off work and was signed off until the 18th April 2016 [218]. She never did return to work as by way of letter dated 6th April 2106 she was dismissed with pay in lieu of notice [221]. The stated reason was "due to the significant and irretrievable breakdown in the working relationship between yourself and the Company".

The Law

52. So far as is relevant we have been referred to the following sections of the Employment Rights act 1996:

43B Disclosures qualifying for protection

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

...

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

...

(d) that the health or safety of any individual has been, is being or is likely to be endangered...

and

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure...—

(a) to his employer...

and

100 Health and safety cases

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

...

(c) being an employee at a place where—

(i) there was no such representative or safety committee,

or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

and

103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Authorities and Texts

53. In submissions, the Respondent referred the tribunal to Eszias v North Glamorgan [2011] EAT, and Panayiotou v Chief Constable of Hampshire [2014] IRLR 500.

Conclusions on the Issues

54. We took time assessing and looking through our notes of the cross-examination as well as the written statements and documents, we considered with care the submissions, the legal provisions and guidance in case law. Having made the findings of fact set out above we returned to the agreed issues in this case in order to make these conclusions.

Qualification

55. It is accepted the Claimant was an employee of the Respondent, she therefore qualifies for protection against dismissal where the reason or if more than one reason the principal reason for dismissal was a protected disclosure or on grounds of a health and safety issue.

Jurisdiction

56. No point has been taken by the Respondent as to the Claimant's compliance with the relevant statutory time limits nor compliance with mandatory ACAS conciliation.

Communications

57. It is accepted by the Respondent that the Claimant did speak to Ms Packham on 23rd April 2015 and did raise a grievance on 16th September 2015.

Health and Safety

58. The first issue, therefore, for the tribunal to decide is under s100 and is: whether the matter brought to the attention of her employer is connected with her work? Clearly, the communications relied upon were to her employer and we find that the matters raised in that discussion and grievance were connected with the Claimant's work.

59. As such, did the Claimant believe that these were harmful or potentially harmful to health and safety? The Respondent urges us to assess the Claimant's state of mind at the time of the communications. This must be the right approach. The only evidence we have as to the Claimant's belief is the evidence of the Claimant herself. The Claimant told the tribunal in answer to a question from the tribunal that it was only after her grievance at the time of the Long-Term Sickness meeting

that she considered the matter to be a health and safety issue; at the time of the communications she did not consider there to be a health and safety issue. Accordingly, on the evidence we have before us the Claimant's claim as pleaded and identified under s100 fails here and we do not, strictly, need to consider any other part of s100.

60. We note however, that in cross-examination the Claimant accepts that there was a Health and Safety representative at the place of work, and it appears that she had accepted this point at the Preliminary Hearing with EJ Roper [40 §7.2]. What did arise out of the evidence however was that the Claimant thought Ms Cutting was the Health and Safety representative; she was not, she was a first aider. The health and safety representatives for the Respondent were Richard Preston and Kenny Green. In these circumstances the question for the tribunal would have been: was it reasonably practicable for the Claimant to have raised this issue with the Health and Safety Representative. We find that it was reasonably feasible for the claimant to have made the disclosure to a Health and Safety representative if she had taken the time to investigate who that was. We find that this lack of investigation by the claimant is corroborative of our finding above that she, at the time she made the communications, did not believe the matter was one of health and safety. In these circumstances, we find that it would have been reasonably practicable for the Claimant to have raised the Health and Safety concerns with the recognised representatives.
61. As the Claimant has less than two-years continuous service the unfair dismissal claim under this head of claim fails and no further consideration is required by the tribunal.

PIDA

(1) Qualifying Disclosures

62. The next issue for the tribunal to decide is if in any or either of the communications, was information disclosed which the claimant believed tended to show one of the following?
- a. A person had failed to comply with a legal obligation to which he was subject
 - b. The health or safety of any individual had been put at risk

63. So far as is necessary we repeat our findings above over the Claimant's after the event consideration of the health and safety issue. At the time of the disclosures, on her own evidence, she did not believe this to be a health and safety issue. Again, therefore the Claimant's claim must fail in this regard.
64. We move on then to consider the legal obligation point. We will look at each of the disclosures in turn. Firstly, and doing as best we can, we consider the conversation with Dawn Packham in April 2015. Looking at the five bullet points contained in the claimant's grievance, which, as we say, is the only evidence (apart from the witness evidence) we have of what was discussed between the Claimant and Ms. Packham in April 2015, we do not consider that these disclosed information that the Claimant believed tended to show that the Respondent was in breach of the any legal obligations, as opposed to it disclosing information which showed a difficult working relationship between the Claimant and a peer of hers: Ms Cutting.
65. There is no evidence that the Claimant is alleging at this point (April 2015) that the Respondent has failed to do anything she has previously asked them to do. We note the Claimant's concerns, on her own case, were generalised and did not point to any policy or part of a policy which she claimed the Respondent was in breach of or was failing to comply with.
66. Five months later the Claimant raises her grievance, which is the second of her two disclosures relied upon. The grievance is in written form at [120-123 in the bundle] and is dated 17th September 2015. The first page and a half of this document address a particular incident on 15th September of that year. It is an incident between the Claimant and Ms Cutting where Ms Cutting swore, this too was not a disclosure of information concerning an alleged breach of a legal obligation by the Respondent, accordingly it is not covered by the PIDA part of the 1996 Act. The Claimant's claims her must therefore fail.
67. It is therefore not necessary for us to make any decisions on other matters relating to whether the disclosures are qualifying or not.

(2) Protected Disclosure

68. Although not strictly necessary for us to answer if necessary we would have found that, self-evidently, the disclosure is protected in that it was made to the employer

(3) Unfair Dismissal

69. Again, whilst not necessary for us to determine, we feel we should address the issue of causation. Was the making of any proven protected disclosure the reason or, if more than one reason, the principal reason for the dismissal? As the Claimant has less than two-years continuity of employment the burden is on her to prove that the reason or if more than one the principal reason for the dismissal was one or more of the protected disclosures.

70. On the basis of our findings of fact it is demonstrably clear to us that the Claimant was not prepared to let the matters underlying her grievance go.

71. Having arrived at this primary finding of fact we looked to see whether there was any material from which we could infer matters that may affect our conclusion as to the reason for the dismissal. We have to say we were distinctly unimpressed by the evidence of Mr Jones in relation to the matter of lack of trust and confidence, a phrase which we consider, is too often misused in tribunal proceedings and considered to be something of catch all for employers seeking to justify dismissals; in particular, we are unimpressed by the lack of contemporaneous record of this developing lack of trust which, we were told, was building from the end of 2015 into 2016. We note also there is no record of it being raised with the Claimant or in documents internal to the Respondent. we do therefore, consider that this is a matter which could give rise to an inference that the alleged reason for dismissal was not the real reason.

72. To leave the matter here would be to ignore other aspects of this case however. Matters which we weigh in the Respondent's favour are that it took the grievance of the claimant seriously, it took its time to resolve the grievance and spoke to other members of staff, it upheld the Claimant's grievance and it imposed serious sanctions upon Ms Cutting. This is not a Respondent which, we find wanted to

brush the incident under the carpet or saw the Claimant as a troublemaker for raising the issue and therefore set out to punish her.

73. Further, and by no means is this a point we put a lot of weight on, but is certainly a relevant issue, is the fact that the Claimant was not dismissed until many months after the written grievance and almost a year after the oral conversation. When we consider the passage of time alongside the other factors in this case outlined above, we consider that passage is a relevant matter to weigh in the balance when assessing the issue of causation.
74. Weighing this evidence up and expressly reminding ourselves that this is not a case where the s98 considerations are necessary, we find that the inferences we feel are open to us to draw from the Respondent's paucity of contemporaneous material are not so strong as to effect the primary findings of fact we have made and so consider that the Claimant has not satisfied us, on the balance of probabilities, that the reason, or if more than one reason the principal one, for her dismissal was her disclosures.
75. Accordingly, the Claimant's claim is not well founded and so is dismissed.

Employment Judge Salter

Date 22 April 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE