Appeal No. UKEAT/0393/13/BA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 14 May 2014

Before

HER HONOUR JUDGE EADY QC

(SITTING ALONE)

MISS E J HOLTON — APPELLANT

BUPA CARE HOMES (CFH CARE) LTD — RESPONDENT

Transcript of Proceedings

JUDGMENT

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APPEARANCES

For the Appellant	No appearance or representation by or on behalf of the Appellant
For the Respondent	MR WILL DOBSON (of Counsel) Instructed by: DAC Beachcroft LLP 7 Park Square East Leeds LS1 2LW

SUMMARY

VICTIMISATION DISCRIMINATION - Protected disclosure detriment

PRACTICE AND PROCEDURE – Employment Tribunal case management: identification of the issues

The Tribunal's record of the issues to be determined fairly and adequately set out the issues raised by the parties' case before it. The Claimant had not identified the failure to deal with her grievance as a detriment and there was nothing in the material before the Employment Tribunal to suggest that this should be added to the list of issues as part of her case.

The Tribunal had adequately dealt with the question of detriments and set out its reasoning. Any brevity in its record of its findings reflected the lack of particularisation or emphasis in the Claimant's own case and fairly recorded the way the claims had been pursued before it.

Applying **NHS Manchester v Fecitt and ors** [2012] IRLR 64, to the extent that the complaints of detriments related to the conduct of the Claimant's co-workers they were, in any event, bound to fail.

HER HONOUR JUDGE EADY QC

1. In giving this judgment, I refer to the parties as the Claimant and the Respondent, as they were before the Employment Tribunal below. This is the third judgment I give today in this matter, and the two earlier judgments should be read along with this for a full understanding of what has taken place. In the circumstances explained in my two earlier judgments - dealing with applications by the Claimant for the postponement of this hearing - I have ended up hearing this appeal in her absence. Although, therefore, I have not had the Claimant's assistance in addressing me on the merits of her appeal, Mr Dobson, who appears for the Respondent, has taken care to take me to the relevant parts of her skeleton argument and to put his points in as balanced and neutral a way as he can. I have also taken further time before giving judgment to re-read the skeleton argument and other material put before me and the Employment Tribunal by the Claimant

Introduction

2. This was an appeal by the Claimant against a judgment of the East London Employment Tribunal under the chairmanship of Employment Judge McLaren, sitting with members, on 13 and 14 September 2012 and 5 March 2013 in chambers, and sent to the parties with written Reasons on 12 March 2013. The Claimant represented herself before the Employment Tribunal as she initially did before me today. The Respondent was represented by Mr Dobson of counsel both before the Employment Tribunal and before me.

3. The Employment Tribunal was charged with determining the Claimant's complaints of constructive unfair dismissal and of detriments on the grounds of protected disclosures and whistle-blowing. It held that those claims did not succeed. In reaching that conclusion, the Employment Tribunal found that the Claimant had established that she had made eight specific

protected disclosures on or around 8 February 2011, when she was working at the Respondent's Cephas Unit, and that she had raised those disclosures with her then line manager, a Miss Geraldine Jones. The Tribunal further found that, save in respect of incident involving a hoist, Ms Jones had not investigated the Claimant's concerns and had not passed these on to anyone else within the Respondent. On the other hand, the Tribunal accepted that the fellow worker who had been the subject of one of the protected disclosures - the disclosure relating to the use of the hoist - did know that the Claimant had complained about that issue, and further found that the Claimant had been subjected to an incident which could potentially have got her into serious trouble as a result (although, in the event, she managed to avoid that happening).

4. The Tribunal found that the Claimant did not raise any protected disclosures after her move to a different unit, Appleton, in or around mid- to late March 2011. Specifically, the Tribunal found that no individual within the Appleton Unit was aware of the disclosures the Claimant had previously made and that, therefore, those disclosures could not have materially influenced any behaviour at that unit. Moreover the Tribunal found that only one of the incidents complained of by the Claimant at the Appleton Unit had in fact occurred - that was described as a prank involving soup - but that, on the Tribunal's findings, that was unrelated to the Claimant's earlier protected disclosures and by itself would not have amounted to a breach of contract.

5. The Tribunal did not accept the other matters complained of by the Claimant as detriments or breaches of contract save that, in relation to the last incident (which the Claimant relied on as the last straw) - the requirement that she attend a supervision on the Mental Capacity Act - the Tribunal accepted that that was a requirement placed on her. In that regard, however, the Tribunal also accepted the Respondent's evidence that that had been for appropriate reasons and was not capable of amounting to a breach of trust and confidence.

Although the Tribunal did not expressly make a finding that the Claimant had waived the previous incidents, the Reasons noted that the only act of detriment found to have been potentially related to the Claimant's protected disclosures occurred in February 2011, some months before she resigned on 23 June 2011.

6. The date of any potential detriment might also be relevant to a question of time limits, although Mr Dobson fairly informs me that this was not a point specifically relied on by the Respondent before the Employment Tribunal, as, at that stage, the case was being run as a series of continuing acts. If it were to be found that there had been only one or two discrete detriments that could not be linked to anything constituting a continuing act going into the later part of the Claimant's employment, he submitted that a time point would then arise as the ET1 was only lodged on 19 September 2011, clearly out of time to give the Tribunal jurisdiction to determine a complaint about a discrete incident or incidents in February 2011.

The background facts

7. The Respondent is a large provider of long-term care for older people, providing residential nursing and dementia care to more than 20,000 residents through some 300 care homes throughout the UK. The Claimant was employed by the Respondent as a Care Assistant at its Godden Lodge residential nursing home from 12 April 2010 until June 2011. She initially worked in the Cephas Unit, a 34-bed nursing and palliative care unit, where she reported to a manager, Geraldine Jones. It was not disputed but that on 8 February 2011 the Claimant had raised concerns in relation to a colleague's use of a hoist and she was told by Ms Jones to put that matter in writing. It appears that matter was then progressed in that Ms Jones raised the issue with Mr Mudhoo, the Home manager employed by the Respondent, and some action was taken in respect of the co-worker in question.

8. That co-worker would have known that it was the Claimant who raised the issue (blew the whistle), as she was the other member of staff in the room at the time of the incident. At around the same time, the Claimant raised some eight other issues of concern with Ms Jones, but was not advised to put those matters in writing. She understood from that that she should not do so. The Tribunal's finding was that Ms Jones took no further action on those other issues.

9. The Claimant complained that after reporting these matters including the hoist incident, there was an incident on 17 February 2011 in which colleagues tried to set her up for what could have been a potentially serious disciplinary matter. As it happened, the Claimant got wise to what they were trying to do and avoided the planned action. More generally, however, the Claimant complained that she was given the cold shoulder at work and that she was left out of a meeting that occurred on or about 14 February 2011.

10. Having lost trust in Ms Jones, the Claimant then (that is, on or about 20 February 2011) did put her concerns in writing, in a document she described to the Tribunal as her grievance. She handed that in to Ms Jones. The Tribunal accepted that Mr Mudhoo had not seen that document and concluded that Ms Jones did not investigate the matters contained therein and did not pass it on to anyone else.

11. On or about 21 March 2011, the Claimant was moved to work on the ten-bed dementia residential unit, Appleton. The Tribunal accepted that this had been a supportive move on the Respondent's part, relating to the Claimant's personal circumstances at that time, and did not put her at any disadvantage. It was not a detriment.

12. On moving to Appleton, the Claimant's manager was a Ms Ingram, who - the Tribunal found - had no special friendship or connection with Ms Jones outside their professional working relationship and who was unaware of the Claimant's past whistle-blowing.

13. There was an issue relating to the Claimant's holiday pay in April 2011, but the Employment Tribunal found that that had been rectified and had simply arisen from an error on the Respondent's part and was not linked to the Claimant's earlier protected disclosures. Also, in respect of holiday entitlement, the Claimant complained that she was required to provide annual leave dates and given inadequate time to select her holiday dates in such a way as to subject her to detriment. The Tribunal disagreed and found that the Respondent had simply been applying its normal protocols and there was no detrimental treatment of the Claimant as compared to other staff.

14. There were some other issues complained of by the Claimant thereafter, but the Tribunal found that none were related to her earlier protected disclosures (of which those working on Appleton did not have knowledge). Specifically there an incident relating to some soup given to the Claimant by other colleagues. Although the Tribunal found that this took place as an attempted prank played on the Claimant, it also found that it was not in any way due to her earlier whistle-blowing. As for the incident the Claimant relied on as the law straw - the requirement she attend a supervision session on mental capacity - the Tribunal found that was an entirely appropriate requirement on the Respondent's part and was not capable of amounting to a breach of trust and confidence.

The appeal

15. The appeal has gone through various iterations before getting to this full hearing. The initial Notice of Appeal was considered, on the papers, not to disclose any reasonable basis for

the appeal. A fresh Notice of Appeal was submitted and, upon reconsideration, was set down for a preliminary hearing.

16. There was thus an appellant-only preliminary hearing before Langstaff P on 15 January 2014, at which submissions were received from Ms Reindorf, acting for the Claimant under the Employment Law Appeal Advice Scheme, and from the Claimant herself. It appears that Ms Reindorf took a full note of the exchange between the Claimant and the learned President when she (Ms Reindorf) was not herself on her feet and it appears that she provided a typed up version of her notes to the Claimant. The Claimant was apparently confused by this into thinking that that was a document emanating from the EAT, but the only transcript provided by the EAT was a transcript of the judgment given on that day, which was duly sent out to the parties on 21 March 2014. The Judgment makes clear that the appeal was allowed to proceed on a limited basis on amended grounds of appeal.

17. There was then a further application by the Claimant to submit yet further amended grounds, but that was refused. The Claimant then sought, albeit out of time, permission to appeal to the Court of Appeal against the order of Langstaff P, but that application was also refused.

18. Against that background, the grounds of appeal with which I am concerned were therefore those permitted to proceed after the preliminary hearing. Those grounds can be set out as follows:

(1) Whether the Employment Tribunal erred in failing properly to determine whether the following incidents - alleged to have occurred when the Claimant was working at Cephas - constituted detriments to which the Claimant was subjected by the

Respondent, namely (a) being set up on 17 February 2011; (b) not being paid for annual leave; (c) being given inadequate time to select holiday dates; (d) being left out of the meeting on 14 February 2011; and (e) not being paid in April and experiencing difficulties in resolving this.

(2) Whether the Employment Tribunal erred in (a) failing adequately to record the scope of the allegations regarding annual leave and payment for annual leave in paragraphs 5.11 and 5.12 of its Judgment; (b) failing thereafter to make adequate findings or give adequate reasons as to whether those matters were detriments.

(3) Related to the preceding points, whether the Tribunal had failed to make findings as to whether those matters were done on the ground that the Claimant had made the protected disclosures found; and whether the Employment Tribunal erred in failing to identify as an alleged detriment the Respondent's failure to deal with the Claimant's grievance as found at paragraph 32 of the Tribunal's judgment and then failing to make a finding as to whether that was because of her earlier protected disclosures.

19. The President expressly did not allow the appeal to proceed in respect of the constructive unfair dismissal claim and the above grounds relate solely to the claim of detriments meted out on grounds of the Claimant's protected disclosures.

The relevant legal principles

The law

20. The relevant statutory protection is contained within Part IVA of the **Employment Rights Act 1996** and the right not to be subjected to a detriment for raising a protected disclosure is set out at section 47B, which provides that:

> **"(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."**

21. Turning to the enforcement of a worker's right under section 47B, section 48 provides that such a complaint is to be brought before an Employment Tribunal and that, on such a complaint, it is for the employer to show the ground on which any act or deliberate failure to act was done.

22. On the question of causation the test is that set out by Elias LJ in **NHS Manchester v Fecitt and Others** [2012] IRLR 64 at paragraph 45 where he stated:

> **"... section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."**

23. The Court of Appeal in **Fecitt** also held that there was no provision in the relevant whistle-blowing protection under the **Employment Rights Act 1996** applicable at the relevant time that made it unlawful for co-workers to victimise whistleblowers. As employers can only be liable for the legal wrongs of their employees, a claim could not succeed under the previous law based solely on the ground of victimisation on the part of co-workers. That was the legal position at the time of the Claimant's complaints.

24. Turning then to the duty on an Employment Tribunal, it is trite law that, in determining a case against an employer, a Tribunal must determine only those issues advanced by the parties and no other. As Peter Gibson LJ stated in **Chapman v Simon** [1994] IRLR 124, it is the act of which complaint is made and no other that the Tribunal must consider and rule upon. In this regard, where there is an agreed list of issues, then as a general rule, that will limit the issues at the substantive hearing to those set out in the list (see **Parekh v LB Brent** [2012] EWCA Civ 1630 per Mummery LJ, in particular at paragraph 31). That said, Mummery LJ went on:

> **"[The Employment Tribunal] is not required to stick slavishly to the list of issues agreed where to do so would impair the discharge of its core duty to hear and determine the case in accordance with the law and the evidence..."**

25. Having recognised the importance of seeking to do justice in determining the issues before it and not to strike down those issues when there was no basis for doing so, it is also right to recognise - as the Court of Appeal did in the case of **Mensah v East Hertfordshire NHS Trust** [1998] IRLR 531 - that there will be no duty on an Employment Tribunal of its own motion to ensure that every allegation in an originating application is dealt with unless it has been expressly abandoned even where the applicant does not put forward evidence to make good the allegation or argues in support of it. That is an approach that will be adopted even in the case of a litigant in person. To expect an Employment Tribunal to go through (what are not always clearly set out) complaints in originating applications and itself determine the issues thereby raised is setting an impossible task, and it is right that an Employment Tribunal should be permitted to work to an agreed list of issues as a useful case management tool whilst, of course, being careful to make sure that it determines (expanding upon that list if necessary) the issues to meet those properly raised before it in the evidence and submissions of the parties.

Submissions

26. I turn then to the submissions before me. On behalf of the Respondent, in his skeleton argument Mr Dobson reminded me of the approach the EAT is bound to adopt in its supervisory jurisdiction, see **ASLEF v Brady** [2006] IRLR 576, where it was stated:

> **"The EAT must respect the factual findings of the employment Tribunal and should not strain to identify an error merely because it is unhappy with any factual conclusions; it should not 'use a fine toothcomb' to subject the reasons of the Employment Tribunal to unrealistically detailed scrutiny so as to find artificial defects; it is not necessary for the Tribunal to make findings on all matters of dispute before them nor to recount all the evidence... infelicities or even legal inaccuracies in particular sentences in the decision will not render the decision itself defective if the Tribunal has essentially properly directed itself on the relevant law."**

27. Also in **LB Brent v Fuller** [2011] ICR 806 CA:

> **"The reading of an ET decision must not, however, be so fussy that it produces pernickety critiques. Over-analysis of the reasoning process; being hypercritical of the way in which the decision is written; focusing too much on particular passages or turns of phrase to the neglect of the decision read in the round: those are all appellate weaknesses to avoid."**

28. And per Lord Hope in **Hewage v Grampian Health Board** [2012] ICR 1054 at paragraph 26:

> **"...one ought not to take too technical a view of the way an employment tribunal expresses itself, that a generous interpretation ought to be given to its reasoning and that it ought not to be subjected to an unduly critical analysis."**

29. Turning then to the particular grounds, Mr Dobson submitted first, that in relation to the 'setting up' allegation, the Tribunal's judgment at paragraphs 28-29 was sufficiently clear. First, there was no detriment in fact, as the Claimant had managed to avoid it taking place. Even if that conclusion were not correct, the culpable colleagues were not acting on behalf of/at the behest of management. There was no vicarious liability established for the Respondent to be liable for such acts of detriment inflicted by the Claimant's fellow employees (see **Fecitt**).

30. Taking the matters at ground 1(b) and (e) together: not being paid. This related to not being paid for annual leave. The judgment, at paragraph 36, sufficiently set out the competing arguments. The Respondent had accepted that the Claimant had not been paid the correct amount for leave in April 2011 but its evidence was that the Claimant had not completed the timesheet. The Tribunal, albeit making a mistake in its reference to May rather than April, clearly preferred the Respondent's evidence in finding that the incorrect payslip was simply an error not linked to the allegations raised. That was a finding of fact open to the Tribunal and not susceptible to challenge on appeal. Similarly, in respect of ground 1(c) - being given inadequate time to select her holiday dates - the Employment Tribunal made a permissible finding of fact at paragraph 46.

31. As for the matter identified at (d), being left out of the meeting on 14 February 2011, the Tribunal made sufficient findings on this, albeit dealing with the point shortly. Although it accepted the Claimant was given the cold shoulder, it did not consider this to have been by reason of a protected disclosure. Given that the Claimant herself had not focussed on this issue, the Tribunal was entitled to take the point shortly.

32. On the second ground - whether the Tribunal erred in failing to adequately record the scope of the allegations regarding annual leave and payment for annual leave, in paragraphs 5.11 and 5.12 of the judgment and then erred in failing to give adequate reasons as to whether those matters were detriments - the Tribunal had experienced difficulty discerning the issues from the two ET1s submitted by the Claimant and from her witness statement. The Tribunal had spent time at the outset of the hearing obtaining from the Claimant the allegations which she wished to pursue. The list recorded in the Tribunal's judgment and Reasons was that which had been agreed. It was on that basis that the Respondent presented its case, as could be seen from its closing submissions. The annual leave allegation was that the Claimant was not

paid the correct amount in April 2011 and had difficulties resolving this. The judgment at paragraph 36 dealt with that adequately. Further, the Tribunal at paragraph 46 adequately explained its finding in relation to the other matter, relating to the notice about taking leave.

33. In terms of whether or not these matters were adequately dealt with by the Tribunal as to whether they were detriments, it was apparent from the reasoning (whilst short in places), that the Tribunal did not find that the 'set-up' incident was a detriment, because the Claimant was able to avoid it becoming an issue. At paragraphs 36 and 46 it dealt with the annual leave allegations and that adequately set out the Tribunal's finding - and reasoning for that finding - that those two matters were not materially influenced by any protected disclosures. Moreover the Tribunal made a clear finding of fact that no individual within the Appleton Unit knew of the Claimant's protected disclosures and that Mr Mudhoo was only aware of the hoist incident and only Ms Jones knew of the other complaints. On the matters relating to annual leave, which took place under a different manager, the Claimant had provided no evidential basis for demonstrating that those were in any way linked to her earlier disclosures.

34. On the third ground - whether the Tribunal erred in failing to identify as an alleged detriment the Respondent's failure to deal with the Claimant's grievance and then the failure to make a finding as to whether or not that was because of a protected disclosure - there was no error on the part of the Tribunal. The Tribunal had faithfully recorded the detriments relied on by the Claimant at paragraphs 5.10-5.22. Although there had been no exchange of closing submissions - so the Claimant had not provided a copy of her closing submissions to the Respondent in the Employment Tribunal proceedings - the Respondent had now seen those as part of the appeal process and it was apparent that the Claimant had not put her case on the basis that a failure to deal with her grievance amounted to a detriment of which she complained.

The Tribunal had accordingly been correct to understand the Claimant's case as not including such a claim.

Discussion and conclusions

35. I turn first to the issues that were before the Employment Tribunal and the position the Tribunal found itself in at the outset of the hearing. There had been two ET1s covering largely the same issues. Reading those - as I have - it is very hard to make out what were the Claimant's actual complaints in terms of detailed allegations. It is tolerably clear that the Claimant was saying that she had blown the whistle regarding the treatment of residents at the Respondent's care home and was then adversely treated in various ways. It would, however, be hard to be clear what she was alleging were actual detriments (to use the statutory language) and what was merely part of the context or background.

36. There was a case management discussion on 19 April 2012, at which Employment Judge Gilbert tried to ensure that there was a clear list of legal and factual issues prepared by the parties in advance of the full merits hearing. At that stage the Claimant was represented by solicitors. On 6 August 2012 they provided, on the Claimant's behalf a document entitled "Further and Better Particulars of Claim re: Whistleblowing". That document relied only on protected disclosures said to have been made by the Claimant at Cephas, not at Appleton. The only detriments identified in that document were stated as follows:

> **"Being bullied at work, treated differently by senior staff and ignored by senior management as set out in her form ET1, which resulted in her losing trust and confidence in her employer, which led to her resignation."**

37. At a later stage, the document does state the Claimant's case that, since her disclosures, she was: "treated differently by senior members of staff and existing carers including being

victimised and bullied at work" but the only specific example then given was that relating to the 'set-up' incident on which the Tribunal made findings of fact in this case.

38. To the extent that any reference was made to any raising of a grievance - although not put in precisely those terms - that was relied on as being how the Claimant had made her protected disclosures, i.e. as demonstrating that she had made disclosures that were protected disclosures for the purpose of the statutory protection.

39. Looking at the Claimant's witness statement, the matter is certainly taken no further forward in respect of the grievance issue.

40. I have taken further time to look carefully through the Claimant's statement and closing submissions before the Tribunal to again see whether there was anything that would have put the Employment Tribunal or should have put the Employment Tribunal on guard, per **Parekh**, that it should broaden the list of issues. There is, however, simply nothing to suggest that the record at paragraph 5 of the Tribunal's judgment was wrong.

41. That observation is true in respect of the potential allegation relating to the grievance but also for the holiday pay and annual leave requirement issues. There is nothing in the documentation that the Claimant presented to the Employment Tribunal to suggest that it had misunderstood the agreed list of issues or needed to broaden out its consideration to incorporate further issues.

42. I turn then to the question whether the Employment Tribunal failed to determine the question of detriment in relation to the specific matters identified in the first ground of appeal. Considering, first, (a) the 'set-up' allegation, the Employment Tribunal found as a fact that the

Claimant avoided the set-up. It could be argued that there is still sufficient finding that there was some kind of detriment to her, in her colleagues even taking the step of trying to set her up. If that was the way the case was put, one could then criticise the Employment Tribunal for not so finding or for failing to address that possibility. That would be adopting a broad view of detriment, but (seeing matters from the Claimant's perspective) that would not necessarily be incorrect.

43. That said, it is not at all clear to me that that was the way in which the Claimant was actually putting her case or indeed that she has even sought to do in her appeal before this court. If, however, I assume for present purposes that this was how the Claimant would wish to put her case and that the Tribunal erred in failing to consider that possibility, the appeal on this ground would still, in my judgment, be doomed to failure. The problem is that the conduct in question was that of her co-workers not of her employer. Thus, pursuant to the Court of Appeal's ruling in **Fecitt**, there could be no vicarious liability.

44. Turning then to the holiday pay and leave requirements issues at (b) (c) and (e) of ground 1. As to whether the Tribunal adequately understood the issues and made findings on the question of detriment, as I have already stated I have spent some time going through the Claimant's witness statement and closing submissions before the Tribunal and I am satisfied that the Tribunal did adequately understand how she was putting her case before it. That is as it recorded at paragraph 5. It then made adequate findings on those points. To the extent it put those findings briefly, that reflects the brevity with which the particular points were dealt with in the Claimant's case as put before it.

45. In relation to ground 1(d), being left out of the meeting on or about 14 February 2011, there was a real difficulty here for the Respondent (and also for the Employment Tribunal).

The Claimant was unable to be precise about which meeting this was or even as to the specific day. Pinning it down to 14 February 2011 was a matter of some guesswork rather than a precise recollection on the Claimant's behalf. Moreover the Respondent faced a practical difficulty in that it was unable to seek a witness order for Ms Jones to attend the Tribunal. She was in the United States. The best evidence before the Employment Tribunal was therefore likely to be the Claimant's recollection and perception of events. It is difficult, however, to see from her witness statement precisely what she was saying about that matter. Indeed it is unclear to me whether this issue was actually addressed in that statement at all.

46. Moreover the cold shouldering allegation appears, so far as one can tell from the Claimant's documentation before the Employment Tribunal, to have been put as against her co-workers and understanding, as I do, the allegation relating to this meeting as being part of that broader case, it must fail for the same reasons as the set-up allegation.

47. I have further considered whether it could be argued that the Employment Tribunal's reasons are insufficiently precise in this regard. In my judgment, however, that would be unfair; the reasons simply reflect the lack of particulars given by the Claimant. Ultimately it is clear that the Tribunal did not find any detriment because of her protected disclosures other than possibly the set-up incident, which I have addressed earlier.

48. I conclude that the Tribunal did not find causation established in relation to the meeting on or about 14 February 2011 or, if it did find that was a detriment relating to some past protected disclosure, found it was an act by her co-workers for which the Respondent was not vicariously liable.

49. If I am wrong on that point, it would be one individual act found by the Employment Tribunal and, in the absence of any continuing course of conduct, a time issue would inevitably arise. I have seen nothing which would suggest that the Claimant was putting forward any basis on which it would be just and equitable to extend time.

50. On the grievance point, that had initially seemed to be the potentially stronger point on this appeal, but, when properly scrutinised, the Claimant's case before the Employment Tribunal simply did not disclose a claim of unlawful detriment in failing to deal with her grievance. It would be wrong to suggest that the Employment Tribunal should have read that documentation and then raised this as a distinct issue of its own accord.

51. Reading the Employment Tribunal's judgment as a whole, while the reasoning provided is short in places (and whilst it might, as the President noted, have been preferable if it had disentangled its findings in relation to constructive unfair dismissal and those in relation to protected disclosure detriments), it is possible to understand the findings made by the Tribunal on the Claimant's case. Whilst it saw that there was some merit in some of her allegations relating to Cephas, it did not find that any of those matters followed her through to Appleton. Even in relation to what took place at Cephas, the burden of the Claimant's case was in relation to her co-workers and not in respect of management. That being so, her case could not succeed.

52. As for the issues, I am satisfied that considerable lengths were taken by the Employment Tribunal, first at the CMD and then at the outset of the full merits hearing, to try to understand the way in which the Claimant was putting her case. The Tribunal's record at paragraph 5 seems to me a thorough setting out of the issues, given the way the case was put before it. It clearly recorded what the Respondent understood as the case it had to meet before this Tribunal. Carefully reading the Claimant's closing submissions before the Employment

Tribunal, there was nothing in those that should have alerted the Tribunal to think that the list of issues did not properly record the case the Claimant was putting before it.

53. Ultimately, whilst it is unfortunate that the Claimant did not remain here to assist in the presentation of her appeal, on all the documentation that she has provided to me for this appeal and that which was provided for the Employment Tribunal below, I am satisfied that the grounds of appeal are not made out and that this appeal should be dismissed.