

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON, EC4Y 8JX

Judgment handed down on 15 November 2013

**Before**

**THE HONOURABLE MR JUSTICE KEITH**

**MR D BLEIMAN**

**MR P GAMMON MBE**

**(IN CHAMBERS)**

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THE CO-OPERATIVE GROUP LTD

APPELLANT

MR S BADDELEY

RESPONDENT

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**FURTHER JUDGMENT**

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## **APPEARANCES**

For the Appellant

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For the Respondent

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**THE HONOURABLE MR JUSTICE KEITH**

1. In paras. 54 and 56 of our judgment of 11 July 2013, we identified a number of matters on which we requested the employment tribunal to provide information. That information was provided to the office of the Employment Appeal Tribunal on 6 August, but it was not sent to me at that time because it was assumed (incorrectly) that I would not be able to consider it until the beginning of October. When I saw the information at the beginning of October, I directed that it should be copied and sent to the parties, so that they could make representations on it if they wanted to. Only the Co-op chose to do so, and we have concluded our consideration of the appeal in the light of that information and the submissions made on it on behalf of the Co-op.

2. The employment tribunal has now explained why it found that the disclosures which Mr Baddeley had made amounted to protected disclosures. In particular, it has explained (a) why Mr Baddeley's complaint about the stock being kept on site and the expression of his concerns about the joint venture in China amounted to the conveying of facts rather than simply the making of allegations, (b) why Mr Baddeley could not be said to have had an ulterior motive for raising his concerns with Mr Berne, (c) why Mr Baddeley's belief that storing amnesty stock on the site amounted to a breach of the relevant regulations had been reasonable, and (d) into which of the categories set out in section 43B(1) of the Act the information which Mr Baddeley had disclosed came. In addition, the employment tribunal has explained that the detriments to which it found Mr Baddeley had been subjected as a result of the protected disclosures he had made had included, in addition to his dismissal, the way he had been suspended and the prohibition on him contacting people from work. The employment tribunal also said that it had found these detriments to be part of a series of similar acts or failures so as to defeat the argument that reliance on some of them was time-barred.

3. The Co-op does not suggest that any of these findings give rise to any additional grounds of appeal. It reminds us of the stance it adopted at the hearing, namely that this was not an appropriate case for the Employment Appeal Tribunal to exercise its power to request the employment tribunal to elaborate on its reasons, for fear that the employment tribunal would be addressing issues which it had not previously considered, and would in truth be reaching *ex post facto* conclusions on those issues which were consistent with its conclusion that Mr Baddeley had been subjected to detriments for having made protected disclosures. We note the repetition of the Co-op's concerns about that, but by asking the employment tribunal to elaborate on its decision in the specific ways we requested it to, we had already decided that the Co-op's concerns were not sufficient to dissuade us from taking that course.

4. For the reasons given in our original judgment and in this judgment, the Co-op's challenge to the employment tribunal's finding that Mr Baddeley had been dismissed because of the protected disclosures he had made fails. It follows that its appeal against the employment tribunal's conclusion that Mr Baddeley's dismissal had been automatically unfair, as well as unfair under the ordinary law of unfair dismissal on both substantive and procedural grounds, must be dismissed.