



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mrs S Bashir**

v **R1 City of Bradford Metropolitan District Council**

**R2 The Governing Body of All Saints Church of England Primary School**

**Heard at: Leeds**

**On: 12 to 14 September 2017**

**Before: Employment Judge JM Wade**

**Members: Ms L Fawcett**

**Mr J Simms**

**Appearance:**

**For the Claimant: Mr S Bashir (Husband)**

**For the Respondent: Mr A Weiss, of Counsel**

**AN EXTEMPORE JUDGMENT** having been delivered to the parties on 14 September, and the record of that decision having been sent to the parties on 18 September 2017, and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided, corrected for errors and elegance of expression:

## REASONS

### Introduction

1. The claimant presented a number of complaints which were subject to case management in this case, on 17 May before Employment Judge Rogerson. The issues were clarified and the claimant, then represented by solicitors, was said to rely on two alleged protected disclosures: one orally to Miss Bowers, one by email to Miss Bowers. She did not rely on an email paragraph communicating concerns about a “cupboard of shame” to the head teacher, Mr Davie, on 14 December 2016 after her dismissal, and about which no action appears to have been taken by the school until January 2017.
2. The claimant is a teacher of long standing and the complaints, following a very brief period of employment with this school, were clarified as unfair dismissal by reason of having made protected disclosures, detriment having made protected disclosures, and breach of contract/wrongful dismissal. There had also been a deductions from wages complaint which was not pursued because it was

resolved between the parties and a Judgment issued. The breach of contract complaint, in common law wrongful dismissal, arose because the claimant was summarily dismissed by the school.

### Evidence

3. We have heard, over three days, evidence from the claimant herself, and then from various witnesses who represent the school, albeit none from the Local Authority: Mrs Shaw, Deputy Head, Miss Bowers, who is the claimant's line manager, Mr Tordoff who delivered some training to the claimant, Miss Clayton who is a Teaching Assistant and Nursery Nurse working in the class where the claimant worked, and Mr Davie, the Head Teacher. We had a bundle of documents that was relevant and very helpful to us in making our findings.

### Findings of fact

4. We have made the following summary findings of fact. The claimant had been teaching since the 1990's, she gained a Masters in Psychology in or around 2007. She had taught all ages, both secondary and primary. She left teaching to a related post concerned with early years' standards between 2012 and 2016.
5. In October 2016, when the claimant's daughter was going to school, she was recommended by Miss Iqbal, a former colleague and friend for a maternity cover post within the school, "All Saints Primary". The respondent had not been able to recruit to that post from the candidates so far interviewed.
6. The claimant taught a sample maths lesson by way of a selection process: a demonstration lesson in the Year 2 class where the cover was required. She also did an interview and on the basis of that assessment by Mrs Shaw and Miss Bowers she was appointed to the post.
7. She was returning to teaching having had a gap, as I have explained, and she was asked to come in and start on Monday 28 November, albeit the maternity leave of Mrs Barraclough was not expected to commence until the beginning of the January term.
8. The claimant's employment contract was an oral contract, in effect agreed between the claimant and Mrs Shaw, the Deputy Head, not least because these events proceeded at quite a pace and it was felt desirable to have the claimant in school so that she could have a handover period.
9. The advert had said that maternity cover was required from 3 January; the advert did not mention a particular length of fixed term. The claimant and Mrs Shaw agreed orally that she would start on that Monday, the 28 November, and there were three weeks of that term left. There was no discussion between Mrs Shaw and the claimant of a notice period.
10. The claimant's expectation was that the Teacher's Conditions of Service, of which she had had experience in the past, would apply to her employment, albeit they were not mentioned at the time. She had worked in many other Local Authority schools in the past.
11. The relevant provisions as to notice in the Teacher's Conditions of Service are at sections 1.1, 1.3 and 4.1 and they provide, in essence, that maternity cover teachers, where there is no provision for a particular notice period, are covered by the Teacher's Conditions of Service' notice period. In this case it is a minimum of two months' notice terminating at the end of a school term.

12. Mrs Barraclough, the class teacher, spent the first two days with the claimant in her class with two teaching assistants, Mrs Clayton and Miss Parveen. From the third day in effect the claimant was in charge of the class. There was no formal induction process, but Mrs Barraclough spent some time introducing the work, the children, the lessons, the standards and so forth over those first two days.
13. On the first Tuesday the claimant also attended a staff wide maths training session with Mr Tordoff at the end of the day, and because of concerns about a school specific maths strategy called 'Continium', it was subsequently arranged with Mrs Shaw and Ms Bowers that she would attend a one to one training with Mr Tordoff on 8 December. That would cover maths but also school policies, procedures and other matters that had arisen.
14. From the outset of the claimant being in charge of that class Mrs Clayton raised concerns about the claimant and her actions, including the moving of the children's boxes (shoes and books).
15. The claimant also wanted to do new displays and Mrs Clayton did not like that. She also asked Mrs Clayton to do photocopying and Mrs Clayton was reluctant to do so.
16. Mrs Clayton had concerns that the box issue would impact the children's routine, because this was a group of children in whom there had been considerable efforts made to establish routine and to establish good behaviour.
17. The claimant reported the difficulties that she was having with Mrs Clayton to her friend Miss Iqbal, who was also a teacher in Key Stage 1 and those exchanges were in the form of Whatsapp exchanges, typically engaged in during the evening and certainly after the school day had finished, sometimes very late at night.
18. The claimant did not like the singling out of poor behaviour at the end of the day by Mrs Clayton, nor the name Mrs Clayton used when talking to the children about a behaviour chart on a cupboard ("the cupboard of shame"), whatever the origins of that name, but said by Mrs Clayton to be many years ago in "her" class.
19. The claimant did not consider at the time that it was a 'safeguarding' issue. Had she done so, she was, on her own account, and on her own application to the school, familiar with 'safeguarding and child protection' issues: she would have reported it immediately had she considered it a safeguarding issue (that is emotional or psychological abuse of the childrent). She did try to extend her own teaching at the end of the day to frustrate Mrs Clayton's "cupboard of shame" discussion with the children, and not least because of that, various frustrations between them emerged.
20. Meanwhile, Mrs Clayton had complained to Mrs Shaw about the claimant and in that first week Mrs Shaw had become aware of the concern about the routine and the boxes issue, and had raised that with the claimant herself.
21. Also in that week Mrs Barraclough and the claimant were discussing and analysing the assessments that had been carried out on the children the previous week, and seeking to learn from those in order to plan for the coming period of teaching.

22. On Monday 5 December, the start of the second week, the claimant was sent a letter by Mr Davie confirming her appointment at the school, and in that letter he said that further information would follow from the Local Authority.
23. By 7 December the claimant remained unhappy with Mrs Clayton over various issues such that her exchanges with Miss Iqbal became very clear as to the focus of her unhappiness in the school and they were clearly and only directed at Mrs Clayton.
24. By 7 December the claimant was clear in her condemnation of Mrs Clayton's character, reporting to Miss Iqbal that Mrs Clayton had a "cupboard of shame". Miss Iqbal was naturally curious about the term, when the claimant said in this context: "I like to be positive, she has a cupboard of shame".
25. When Miss Iqbal asked what it [the cupboard of shame] was, the claimant said that the children on the 'Cloud Chart' had to tell the class what they had done wrong in the day. The claimant, we accept, considered that humiliating and wrong as a matter of teaching practice and others would may share that view.
26. On 8 December there was an angry outburst by Mrs Clayton, who shouted at the claimant because the claimant was discussing the children's assessments with Mrs Barraclough, and Mrs Clayton felt that the claimant was not taking on board matters that she should have done. Mrs Clayton rudely intervened in that conversation between the claimant and Mrs Barraclough.
27. The claimant then complained; she was very upset about that incident and she reported it to Ms Bowers. In that context she also raised concerns about Mrs Clayton's treatment of the children at the end of the day. Miss Bowers did not act on that part of the concern at all.
28. Mrs Shaw then arranged a meeting the next day for the claimant, Mrs Clayton and Miss Parveen to discuss work planning and she thought that that would clear the air. Mrs Clayton had complained to her generally about what she saw as the claimant's shortcomings as a teacher, whether fair or unfair.
29. That meeting ended in the parties thinking that things would move forward, that is, the Rowan class team including the claimant thought that things would move forward. The claimant, however, was encouraged by Miss Iqbal to raise her concerns about Mrs Clayton with Mr Davie, and so she reported the boxes issue to Mr Davie on the morning of Friday 9 December. Miss Iqbal had said this to the claimant "Michelle can be a bully tell John" and she encouraged her to do that, rather than complaining to the claimant's line manager Miss Bowers, who Miss Iqbal described as someone who would just "keep the peace". Of course those exchanges were not known to Mr Davie or Miss Bowers or anyone else at the time.
30. The following week was the last week of term. On the Monday the claimant had comprehensively prepared some maths work on data handling and charts. Mrs Clayton thought that the work for her group was too easy. She went to report that to Mrs Shaw.
31. The next morning the claimant went to Mr Davie again, and showed him her maths work naturally feeling quite defensive about it, and she reported to Ms Iqbal that he was not very happy (the inference being that she was again raising concerns about Mrs Clayton again).

32. The children, of course, in that last week of term, were very busy with their Christmas activities and Mrs Clayton and Miss Parveen took them for various matters and also undertook the cleaning of the Library. That meant that the claimant was on a number of occasions leading the class unaccompanied by Teaching Assistants.
33. On the Tuesday the claimant accessed resources at lunch time for the displays that she had wanted to promote in the class, and at the end of the day, having had a day within the class, she wrote two children's names on the board rather than using the cloud behaviour chart.
34. Mrs Clayton returned to the class at the end of the day and again there was an angry outburst and shouting by Mrs Clayton when she saw that the names of the children had been written on the board (rather than the chart being used). She castigated the claimant about that in front of the children.
35. The claimant then emailed Miss Bowers that evening, again upset about the names on the board issue, and she referred in her email to "the cupboard of shame" directly. The claimant said this in her Whatsapp exchange with Miss Iqbal about that email: "and I thought just go and complain, just do it, and lets see if the cupboard of shame is school policy too 'cos she's asking for war" (meaning Mrs Clayton).
36. We, in making our findings of fact, have to ask ourselves what we consider was more likely than not, given the evidence that was presented to us in the bundle and by the witnesses. We accept that the claimant sent that email to Miss Bowers at the end of the day, of course she did, especially given her exchange with Miss Iqbal over Whatsapp. But on our findings we do not accept that Miss Bowers saw that email that evening, and we accept her evidence that she could not subsequently find it. Certainly Miss Bowers did not speak to Mr Davie or Mrs Shaw about a "cupboard of shame" email. She had previously talked to Mrs Shaw about the outburst on the 8<sup>th</sup> by Mrs Clayton, and the claimant's unhappiness about the treatment of the children in connection with the behaviour chart, but she had not used the words cupboard of shame.
37. On 13 December Mrs Shaw relayed her concerns about the claimant to Mr Davie. By then she had been shown work, or rather a lack of work in the books of the children by Mrs Clayton and Mrs Barraclough, and she also had Mrs Wakefield, another Teacher in Year 2, come to express concerns that the claimant was expressing concerns about her colleagues to her. Mrs Shaw had also had Miss Parveen raise issues about the claimant with her.
38. Mrs Shaw and Mr Davie, or certainly Mr Davie, asked HR to attend the school the next day and that next day sought advice about what could be done in this situation. They were advised on 14 December that they did not need to go through any sort of performance or other process with the claimant because she did not have two years' service. The worst case scenario described was that if the claimant was dismissed she would be entitled to two months' notice but the school should offer three weeks'. Mr Davie did not know when he had that conversation that the claimant had not signed, or been sent, a contract permitting three weeks' notice to be given at any time. It was as simple as that. Mr Davie also knew from appraisals that a Polish Teaching Assistant had a teaching qualification and he had that in his mind as well that he could possibly cover the teaching role in the class in another way.

39. Either way, he and Mrs Shaw having taken advice, decided that the pragmatic route forward was to simply terminate the employment of the claimant before matters deteriorated any further.
40. The chain of events on that day as the claimant experienced them, was simply that Mrs Clayton was still angry about the names on the board issue from the previous day, but went off to be the 'Party Queen' and assist with the Christmas party for all the children, leaving the claimant in peace as she saw it. The claimant then also joined in with that Christmas party event that day, not knowing what was to come.
41. At the end of the school day. Mr Davie and Mrs Shaw went to see the claimant. Mr Davie said words to the effect that they were letting her go that day because of a personality clash. Mr Davie and Mrs Shaw did not give any further reasons about the bringing to an end of the claimant's employment. The claimant asked about her notice and Mr Davie offered 3 weeks' notice which was on the basis of the advice that he had been given by HR.
42. The claimant told Miss Iqbal straight away about those events and her interpretation of them as a summary dismissal, which was a reasonable interpretation. She then wrote a letter to Mr Davie, which he received on the 15<sup>th</sup> the next day, setting out a great deal of unhappiness and sense of injustice about the chain of events, and in particular the conduct of Mrs Clayton. In effect she said that she did not accept there were any grounds for her summary dismissal by the school or the Local Authority.
43. On that day, the 15<sup>th</sup>, Mr Davie confirmed in a reply to the claimant that the reason for her dismissal was her failure to follow school policies and procedures for which there had been support and training given, and specifically he said 'marking policy' and making accurate use of assessment and he highlighted accurate marking in his letter to the claimant. No documentary evidence of such was presented to the Tribunal.
44. On 10 January the Local Authority also wrote to the claimant saying her dismissal was on the grounds that she failed to follow school policy and procedures having been given training in those. The claimant was also paid at the wrong pay scale by the Local Authority, but that was rectified before this hearing.

#### Discussion and Conclusions

45. The complaints that were pursued were wrongful dismissal, automatic unfair dismissal and detriment on the grounds of having made protected disclosures.
46. It is convenient to deal first with the wrongful dismissal/breach of contract complaint as did Mr Weiss.
47. The respondents' pleaded case on wrongful dismissal was not subject to any formal amendment before this hearing, but it was conceded during the course of the hearing that it had come to the view that the notice period to which the claimant was entitled was the Conditions of Service' notice period, namely at least two months ending at the end of a term. It did not assert a case that it was entitled to terminate the claimant's contract of employment summarily because of her own repudiatory conduct or for any other reason, and on our findings there was a summary termination in the conversation on 14 December 2016.

48. The claimant accepted that a payment in respect of that notice period had been made.
49. She also accepted in her evidence that she would have expected the Conditions of Service to apply, and there was no oral notice period agreed between herself and Mrs Shaw, nor any clear fixed term agreed between them.
50. In our judgment and adopting the submissions of Mr Weiss, the notice period which the objective bystander would say “of course” was to be implied into this contract, and for which there was a necessity, because there was no fixed term agreed either and the context was maternity cover, was the Teachers Conditions of Service’ notice period namely, two months ending at the end of a term in these circumstances.
51. Our judgment then in relation to the wrongful dismissal complaint is that clearly the claimant was wrongfully dismissed, summarily on 14 December in breach of her entitlement to notice. As to the consequences of that, the respondent has made a payment on account of damages in effect, that is notice until the end of April, and therefore we make no award of remedy in relation to that complaint, albeit it succeeds before the Tribunal.
52. We then of course have to deal with the detriment and dismissal complaints and in addressing those complaints it is sensible that we say something about the parties’ credibility and reliability, because there was a great deal of factual dispute.
53. We have used a wide variety of tools available to us to make findings of fact. We do not accept the principle of Mr Weiss’ submission about Miss Bowers, that if a witness is to be believed about one matter, they should also be believed about others. That is sometimes the case; it is not always the case.
54. As to the claimant, in respect of much of her evidence we have accepted it as a chronological account, honestly given, and we entirely understand her sense of injustice at these events which are clearly of great distress to her as a teacher with genuine concerns for the children she taught and a great deal to offer them. We do not, however, accept her interpretation of those events, no doubt coloured by what has happened since.
55. We have also considered, of course, the particulars and the chronology that were reflected in the Whatsapp exchanges. We consider those exchanges to be the most reliable source of a chronology of events involving the claimant at school from 7 December onwards.
56. We do not have any exchanges prior to that, and there may have been none, but certainly in the period from the 7<sup>th</sup> to the 14<sup>th</sup> December, we consider that to be the most reliable account, untainted by hindsight and the presentation of these complaints. The exchanges were completed very proximately to the events that were taking place at the time, and they gave us a very clear insight into the claimant’s thinking, and to some extent Miss Iqbal’s thinking at the time, who also was present as a teacher in the school.
57. As to the oral evidence of the respondents’ witnesses we did not consider Mrs Clayton’s evidence about the claimant, or about the precise chain of events, or the circumstances in general to be reliable, or showing any insight at all into any responsibility for her conduct or these events in the round, which are clearly

- regrettable. As to the other respondent witnesses we do consider that in general they were doing their best to give the Tribunal a truthful account.
58. We can only deal with the complaints that we have before us. Had the claimant had two years' service then in all likelihood her dismissal would have been unreasonable one and she would have had that right not to be unfairly dismissed, as well as her right to pursue wrongful dismissal.
  59. As a result of that lack of service she has to prove that she made protected disclosures in order to bring both her detriment complaints and her dismissal complaint.
  60. Mr Weiss properly directed the Tribunal to the law in relation to the definition of a protected disclosure within the Employment Rights Act 1996, which for brevity at the end of a long day we do not repeat here. A requirement of those provisions is that when the claimant provided the information about the "cupboard of shame" issue to Miss Bowers, she reasonably believed that she was providing information tending to show the respondents were breaching a legal obligation (namely to safeguard children in their care) and that she was providing that information in the public interest.
  61. We have had insight of course, into the claimant's state of mind at the time, which we do distinguish from her state of mind when she presented her witness statement, and indeed her state of mind before the Tribunal, which no doubt has been coloured by the proceedings and the events that have followed.
  62. Taking the evidence of her insight into the events at the time of the Whatsapp messages, and that she was familiar with safeguarding principles, she has not established to us that she reasonably believed at the time that safeguarding was at risk for these children. More significantly, in our judgment, she did not reasonably believe at the time, that she was making the disclosures in the public interest, and to protect the children, rather than as, using her own words, part of a war with Mrs Clayton.
  63. As we have indicated, had she reasonably believed that she told Miss Bowers and later emailed her about the cupboard of shame in the public interest, she would have been very clear and prompt as to the safeguarding issues raised and would have escalated them to the right person within the respondent school, namely Mr Davie. That is particularly so when she had been told by Miss Iqbal that Miss Bowers was a peacemaker and to "go to Mr Davie".
  64. For these reasons, which are really preliminary matters in establishing detriment and dismissal complaints relating to protected disclosures, these complaints fail, because the claimant has not shown that she made protected disclosures within the Act.
  65. To summarise our judgment which will come out in summary form, with our brief decisions, the claimant was not in breach of her contract of employment as a teacher and therefore she was wrongfully dismissed summarily on 14 December. We make no award of remedy in relation to that complaint. Her complaints based on making protected disclosures fail.

**Employment Judge JM Wade**

Dated: 20 September 2017