



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss L Miles

v

**The Councillors of St Clement
Parish Council**

Heard at: Norwich

On: 22 & 23 November 2017

Before: Employment Judge Postle

Appearances

For the Claimant: In person.

For the Respondent: Mrs B Hill, Parish Councillor.

JUDGMENT

1. The claimant was automatically unfairly dismissed pursuant to s.103A of the Employment Rights Act 1996 for making a qualifying protected disclosure.
2. The claimant was also unfairly dismissed under s.98 of the Employment Rights Act 1996.
3. The respondents are ordered to pay to the claimant compensation in the total sum including a basic award of £2,287.86.

REASONS

1. The claimant was employed by the respondents from 1 December 2014 as the parish pavilion cleaner and caretaker until her dismissal on 11 April 2017. The claimant brings a claim for unfair dismissal under the Employment Rights Act 1996, s.98 and for automatic unfair dismissal (the whistle blowing provision) under s.103A also of the Employment Rights Act 1996. The claimant also has claims for notice pay, unpaid wages and holiday pay.
2. The respondents resist all the claims.

3. In this tribunal we have heard evidence from Mrs Hill and Miss Young both parish councillors and Miss Treacher the Parish Clerk. All giving their evidence through prepared witness statements.
4. The claimant gave evidence and on her behalf a Mrs Thompson also gave evidence both through prepared witness statements. The tribunal also have the benefit of a bundle of documents consisting of 288 pages.

The Law

5. Under s.103A of the Employment Rights Act 1996 an employee will be regarded as automatically unfairly dismissed if the reason or principle reason for the dismissal is that the employee had made a protected qualifying disclosure. Whilst s.103A itself is a straightforward legislative provision it only applies where there has been a protected disclosure within the meaning of s.43A to s.43L. These are notoriously complex provisions. Briefly for a disclosure to gain statutory protection it must satisfy the following three conditions:-
 - 5.1 It must be a disclosure of information;
 - 5.2 It must be a qualifying disclosure that is one in the reasonable belief of the worker making it tends to show that one or more of six relevant failures has occurred or is likely to occur;
 - 5.3 It must be made in accordance with one of six specified methods of disclosure.
6. The disclosure relied upon in this case is s.43B and (d) of the Employment Rights Act 1996 which states that the health or safety of an individual has been endangered, is being endangered, or is likely to be endangered.
7. Turning to the law on ordinary unfair dismissal we find that in s.98(1); conduct is a potentially fair reason to dismiss, that is not the end of the matter, one then has to look at s.98(4) in dealing with dismissal which says:-

“Where the employer has fulfilled the requirements of sub section 1 the determination of the question of whether the dismissal is fair or unfair having regard to the reason shown by the employer depends on whether in the circumstances including the size and administrative resources of the employer’s undertaking the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and a substantial merits of the case.”
8. It is for the employer to show that misconduct was the reason for dismissal, and according to the EAT in a well known case of British Homes Stores Ltd v Burchell [1980] ICR 303 a three fold test applies. The employer must show that; it believed the employee was guilty of misconduct, it had in mind reasonable grounds upon which to sustain that belief, and at the stage at which the belief was formed on those grounds it

had carried out as much investigation into the matter as was reasonable in the circumstances. This means that the employer need not have conclusive direct proof of the employee's misconduct, only a genuine and reasonable belief reasonably tested. The employer then has to show that the decision to dismiss was a decision which a reasonable employer could embark upon given the facts known to them at the time they took the decision to dismiss.

The Facts

9. Part of the claimant's role in accordance with the claimant's job description is to take bookings for the hire of the field and the pavilion in the village and we see that at page 34. The claimant does not appear to be responsible for arranging such matters as the funding, risk assessments or insurance. It is clear that the parish council were notified by an email of an event to take place on Saturday 6 August 2016 from 'live sports development' on 13 March 2016 at 41a of the bundle and addressed to Messers Phelps, Bobbins, Shepperson and Hillier all I believe parish councillors. That email said:-

“Please find enclosed the request originally sent in January with the grant from now completed. This is mixture to use facilities and to fund village activities. Mark and I look forward to the parish reply once it has been put before the council.”

10. That email had three attachments 41b, 41c and 41d. At 41c we clearly see listed in there that there was to be a sports activity tester day on the memorial field on Saturday 6 August 2016. Other village clubs being invited to participate. It is clear that an event booking had been made for the 6 August, quite how or why the Parish Clerk or the parish council would say now or then they were not aware of the event in the light of that documentary evidence is a mystery. One accepts that the risk assessment may not have been done prior to the event and that is in respect of the barbecue. It also appears no issues were raised about this event at the time or thereafter until some months later, in fact the following year in April.
11. It is also clear that the claimant has encountered difficulties with Miss Treacher the Parish Clerk over holiday requests prior to February 2017. It appears that the parties had a good working relationship until this time. It is true that the claimant around the 28 February (page 146) approached councillors direct with a grievance about her annual leave having seemingly submitted holiday requests to the Parish Clerk on 18 December and no positive response appears to have been received. It would appear that Parish Clerk was not best pleased by the claimant approaching the councillors direct.
12. In the meantime part of the claimant's job description was to carry out weekly checks on the alarm system and report any problems to the users of the pavilion and to the Parish Clerk Miss Treacher. A defect in the

alarm system was found around 23 January and the claimant informed the Parish Clerk. The alarm was de-activated on 24 January and on the 24 January the claimant questioned the Parish Clerk in a call to enquire if the regular users of the pavilion who have access should be informed. I am satisfied that the response the claimant received from the Parish Clerk was words to the effect of "ignorance is bliss and not to say anything more". This is in part confirmed by the claimant's email of 24 January at page 72 of the bundle which reads:-

"Hi Karen, just so that you are aware Independence Matters will not be using the pavilion until the fire alarm system is fixed and back in use. Also after our telephone conversation earlier I must state that I am very uncomfortable that the other users are not being informed that the fire/smoke alarms have been disabled. I strongly feel that this should be advised so they are aware and can make the choice if they would like to continue their bookings. Thanks Lindsey"

13. It does not appear that the contents of that email were contradicted by an immediate email or any response by the Parish Clerk. It is also clear that the Parish Clerk Miss Treacher on or about 26 January in a discussion with the claimant was not happy with the claimant sending the above email. In fact she indicated to the claimant that she should not send emails and should phone her as a preference.
14. The claimant made a complaint to Miss Young a councillor on 26th about the alarm and the Parish Clerk. The claimant's first qualifying disclosure.
15. The claimant also on 10 February received a call from Miss Hill, a councillor, that the claimant is clear of, she even recalls the call coming at time when "Eastenders" was on the television, enquiring with the claimant what was going on with the Parish Clerk. The claimant's response was word to the effect "you don't know half of it". Miss Hill also wanted to know from the claimant whom she had spoken to amongst the male councillors about the claimant's concern over her annual leave and the alarm issue.
16. The claimant then raised two grievances, the first on 28 February at page 146 about her annual leave, and the second grievance on 17 March about the alarm.
17. On 2 March the claimant goes off sick initially for two weeks and then a further two weeks. For reasons best known to the respondents they requested the keys from the claimant, one assumes that the claimant was not the only person in possession of the keys for the pavilion. This would have been around 7 March at page 186. In the meantime Miss Young makes a statement on the 4 March at page 174, Miss Hill makes a statement on 2 March at page 158 and Miss Treacher makes a statement or response to the claimant's grievance on 4 April at pages 221-224. These appear to have been prompted by an informal meeting with the claimant on 21 February of which what occurred at that meeting is disputed between the parties, or even what its stated purpose was. There

was again a follow up meeting on 1 March and again it appears there was some dispute as to the purpose and what was actually discussed at that follow up meeting.

18. The claimant emailed she was returning to work on 27 March at page 200. On the same day the claimant is suspended and the letter of suspension says:-

“In view of your recent behaviour and in the interests of effective parish council management by the clerk and responsible officer you be suspended from work without prejudice with immediate effect.”

19. On 22 March the council held a meeting, the personnel committee meeting and the minutes of that are at pages 194-195 and it is interesting to see the conclusion of that meeting at page 195 and I quote:-

“At the conclusion of the interview and in the light of all the evidence Mr Neil Shepperson and Miss Sheila Young came to the mutual agreement that the only course left would be to recommend that Miss Miles be dismissed from her employment with Terrington St Clements Parish Council”

And that is signed by both of them and dated 30 March.

20. The claimant is then invited to a disciplinary hearing originally scheduled for 4th but was re-scheduled for 11th. The letter we see at page 206 it refers to committee members Young, Shepperson and Hill. The letter is dated 30 March. The letter starts:-

“I am writing to tell you that Terrington St Clements’ personnel committee are considering dismissing you.”

and informs her of the right to be accompanied and sets out briefly the allegations including an allegation about an unauthorised event taking place on 6 August on the pavilion fields, particularly the other allegations are said to be:-

- 20.1 The claimant’s refusal to accept the Parish Clerk as her line manager.
- 20.2 Refusal to discuss annual leave requirement.
- 20.3 Harassing employees to reply to her.
- 20.4 Body language and behaviour that was aggressive.
- 20.5 She’d involved parish councillors in confidential matters to sway support for herself.
- 20.6 She had not complied with her job description.

20.7 She was said to be aggressive at a meeting on 21 February and aggressive at meeting on 1 March.

20.8 And said to be working in another role whilst signed off sick.

21. At that stage the claimant is not given sight of the statements provided by Messers Hill, Young and Treacher, and the disciplinary hearing proceeds on 11th conducted by Hill, Shepperson and Young the very people that have prepared statements which they have not provided to the claimant and two of them being involved in another meeting of the council in which they were already suggesting that the proposal was to dismiss the claimant. What is not clear and the claimant was at least very candid about this, is whether or not it was said by Miss Young as being recorded in the minutes at the start of the disciplinary and Miss Young was unable to explain in evidence yesterday and I quote:-

“The chairman explained that the purpose of this meeting was to confirm the decision of the committee to summarily dismiss Miss Miles from her employment with Terrington St Clements Parish Council with immediate effect according to the reasons stated in the letter of dismissal and that no discussion would take place save that procedural questions would be answered.”

22. The claimant was dismissed at that meeting. It appears that the meeting was no more than a crossing the ‘Ts’ and dotting the ‘Is’ as the claimant’s dismissal had already been decided at a sub committee of the parish council.

23. The claimant duly appealed by letter of 18 April at pages 232–234. That is a detailed letter of appeal. The respondents responded on 16 May at pages 240-241, that letter is signed by Messers Young and Hill, and the penultimate paragraph says:

“Since the last communication your vexacious behaviour particularly on social media has not improved therefore your appeal against dismissal has been refused.”

24. Whichever way you look at it the claimant’s right of appeal was refused. It is clear from that letter.

25. What conclusions can I draw from this? Well it is clear that the claimant was not given any of the evidence of Young, Hill and Treacher that had been prepared presumably for the sub committee meetings of the parish council. It appears that whatever the claimant said at the disciplinary hearing on 11 April the decision had already been taken to dismiss the claimant. That is not how you proceed in the modern world dealing with a fair, and proper, and just dismissal.

26. The claimant it seems was not given an opportunity to respond to the allegations and furthermore the allegations in any event appear vague and

largely subjective. It appears those taking the decision to dismiss were also involved in the investigation against the claimant and one of the allegations, the unlawful event on 6 August had that been properly investigated if indeed that was ever the intention of the parish council they would have realised that the parish council had been properly notified of the event albeit not all the risk assessments had been carried out. It is clear that once the claimant had made complaints about her annual leave and about her Parish Clerk, and about the alarm she was never going to get a fair hearing.

27. In those circumstances I am entirely satisfied that the reason for the claimant's dismissal was because she had made a complaint, a qualifying protected disclosure about the alarm system and from then on in she was not going to stand a chance of keeping her job.
28. I am therefore satisfied that the claimant has been automatically unfairly dismissed under s.103A of the Employment Rights Act 1996 for making a qualifying protected disclosure, and I am also satisfied that the procedure leading up to and including the dismissal was inherently flawed for the reasons I have advanced.
29. Just dealing with credibility, as to the claimant and her witness Mrs Thompson, I found her an honest, straightforward and candid witness who was clear and precise in the evidence she advanced before this tribunal. Unfortunately the respondent's witness evidence was confusing, lacking in credibility particularly when one looks at the documentary evidence before this tribunal. Miss Hill is clearly a person capable of exerting her views, she is clearly not a shrinking violet and her manner in the way she cross examined certainly Mrs Thompson and to a lesser extent the claimant was overbearing and aggressive to those witnesses.
30. Miss Young's evidence was like shifting sand, she was unable to justify any of her own actions and the evidence in the documentary evidence before this tribunal other than to say simply she was advised to write when questioned.
31. As to Miss Treacher, I am satisfied on the balance of probabilities that she did say to the claimant when the issue of the defect in the alarm was raised that "ignorance is bliss".
32. So we now have to deal with remedy.

REMEDY

33. The tribunal then went on to deal with remedy. In considering the possibility of a Polkey deduction I came to the conclusion that it was not appropriate in this case. This is a possible reduction in any award for

future loss to reflect the chance that the individual would have been dismissed fairly in any event.

34. This may take the form of a percentage reduction or it may take the form of a tribunal making a finding that the individual would have been dismissed fairly after a further period of employment. The question for me and the tribunal is whether the particular employer (as proposed to a hypothetical reasonable employer) would have dismissed the claimant in any event had the unfairness not occurred.
35. I am entirely satisfied had the unfairness not occurred in the procedure leading up to and including dismissal it was clearly possible the claimant would never have been dismissed.
36. After the discussions with the parties it was agreed that the claimant's average pay with the respondents per week was £103.64. We then considered the claimant's average pay in her new employment which commenced with ISS Facilities from 5 June 2017 that amounted to £80.11.
37. The following awards were therefore made:-

Basic Award

Given the length of service and age at the date of dismissal, two weeks = £207.28

Immediate loss

32 weeks x £103.64 £3,316.48

New employment 5 June 2017

less
32 weeks x £80.11 £1,922.64

BALANCE £1,393.84

Failure to follow disciplinary procedure, having given this some thought and given the fact that the respondents are a small parish council the uplift is ten percent (10%). £139.38

Future loss

Having considered the claimant's age, realistically the opportunities of extra hours and overtime, 12 weeks at the difference of £23.53 £282.36

Loss of statutory rights £250.00

Holiday pay £15.00

After some discussion between the parties it was agreed that the claimant was not outstanding in any wages for the period from the end of March up until her dismissal.

Recoupment does not apply to this award.

TOTAL £2,287.86

Employment Judge Postle

Date:

Sent to the parties on: ...12/01/2018..

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For the Tribunal Office