



EMPLOYMENT TRIBUNALS

Claimant: Mr B Hampton

Respondent: Butterfield Signs Limited

Heard at: Leeds **On:** 8 November 2017

Before: Employment Judge Cox

Representation

Claimant: In person

Respondent: Mr Jenkins, solicitor

REASONS

1. Under Rule 37(1)(a) of its Rules of Procedure, the Tribunal has power to strike out a claim if it has no reasonable prospect of success. The Respondent applied for the claim to be struck out on that basis.
2. At the Preliminary Hearing at which that application was considered, the Claimant confirmed that he was alleging unfair dismissal only. He had worked for the Respondent for less than two years and so did not qualify for the right to bring a claim of ordinary unfair dismissal (Section 108(1) Employment Rights Act 1996). He alleged, however, that the sole or principal reason for his dismissal was that he had made a protected disclosure, making his dismissal unfair under Section 103A ERA. There is no qualifying length of service for such a claim (Section 108(3)(ff) ERA).
3. The Claimant confirmed that he was relying on two alleged protected disclosures. One was made to Mr Lambert, Associate Director, in May 2016 at an appraisal meeting, when the Claimant told Mr Lambert that his chair was faulty: the gas cylinder mechanism for adjusting the height of the seat was not working, so the seat sank when the Claimant sat on it. The second alleged protected disclosure was made to Mr Simon Ball, Health and Safety Manager, in an email in April or May 2016 in which the Claimant told Mr Ball that his chair was not operating correctly because the gas cylinder was faulty.
4. The effect of the chair being faulty, the Claimant said, was to cause him to have to lean over his work. It also caused his shirt to ride up,

which he found embarrassing. He believed that over the long term the faulty chair would have an adverse effect on his muscles, although during the course of his employment there had been no effect on his health.

5. When the Tribunal asked the Claimant why he believed these disclosures were made in the public interest, the Claimant said that they indicated that Mr Lambert was not committed to the health and safety of the Respondent's workforce.
6. When the Tribunal asked the Claimant why these disclosures amounted to qualifying disclosures within Section 43B ERA, he said that they indicated that his health and safety was being or was likely to be endangered (within Section 43B(1)(d) ERA).
7. The Tribunal concluded that there was no reasonable prospect of the Claimant being able to establish that these amounted to qualifying disclosures within Section 43B ERA. There was no reasonable prospect of the Claimant being able to establish that his belief that his complaint about his chair was made in the public interest was reasonable. His faulty chair affected him only. It had as yet not caused him anything but embarrassment. This was not an issue that established a wholesale disregard of health and safety obligations by the Respondent.
8. The Tribunal also concluded that there was no reasonable prospect of the Claimant being able to establish that his belief that his complaint about his chair tended to show that his health and safety was being or was likely to be endangered was reasonable. The Claimant confirmed that the chair caused him embarrassment but as yet no injury. The Tribunal could not identify any reasonable basis for a belief that even long-term use of a chair that was lower than its ideal height would cause muscular injury on the basis that the Claimant alleged. The Claimant said that he would sustain a muscle injury because the chair caused him to hunch over his work, but the Tribunal could not understand why a chair that was too low would cause the user to adopt a hunched posture.
9. Finally, the Tribunal was satisfied that there was no reasonable prospect of the Claimant being able to establish that his complaints about his chair, even if they amounted to protected disclosures, were the sole or principal reason for his dismissal. The Claimant accepted that Mr Lambert had told him that he was unhappy with aspects of his performance, both before and during the appraisal meeting in May. Consistent with this, the detailed letter of dismissal, which the Tribunal read, also confirmed that the reason for the Claimant's dismissal related to aspects of his work performance. Further, the Claimant accepted that the recruitment costs involved in replacing him were likely to be more than the cost of replacing a faulty chair in response to the Claimant's complaints.
10. In all the circumstances, the Tribunal considered that the Claimant had no reasonable prospect of establishing that his complaints about his chair, rather than his unsatisfactory performance in his role, was the reason or principal reason for his dismissal.

11. For these reasons, the Tribunal dismissed the claim.

Employment Judge Cox

Dated: 22 November 2017