EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr A Jamil	**v**	Travelex

Heard at: Reading **On:** 12, 13 and 14 March 2018

Before: Employment Judge S Jenkins

Appearances:

For the Claimant: In person
For the Respondent: Mr L Harris of Counsel

RESERVED JUDGMENT

1. The Claimant was not dismissed by reason of having made a protected disclosure and his claim is therefore dismissed.

REASONS

Background

1. The claim before me was one of unfair dismissal, pursuant to section 103A of the Employment Rights Act 1996 (the "Act"), on the basis that the reason for the Claimant's dismissal or, if more than one, the principal reason, had been that he had made a protected disclosure. The Claimant did not have sufficient service to pursue a claim of "ordinary" unfair dismissal pursuant to section 94 of the Act. The Claimant initially also brought a claim of victimisation under section 27 of the Equality Act 2010 but that claim had been struck out at a preliminary hearing in February 2018 and therefore was not before me. In the circumstances, that enabled me to deal with the case alone without tribunal members.

2. I heard evidence from the Claimant on his own behalf, and from five witnesses on the Respondent's behalf, namely: Mrs Satinder Tumber, Team Manager; Mr Amandeep Gahla, Team Manager; Mrs Fiona Byrne, Administrator; Mrs Marieanne Lloyd, Retail Sales Manager; and Mr Mohit Dogra, Customer Services Manager. I had before me a bundle spanning some 210 pages, although there were many documents which had

subsidiary numbering and therefore the total number of pages within the bundle was significantly greater. I read all the documents in the bundle to which my attention was specifically drawn; this was a relatively small number of them, with approximately the first half of the bundle (up to page 94AIXI) being made up of the pleadings and correspondence between the parties.

3. That observation about documents has some relevance for the case in that I had cause, during the Claimant's closing submissions, to indicate to him that a reference he had made to allegations of breaches of legal obligation by the Respondent, in the form of its treatment of passengers with diplomatic passports, had not been raised in evidence before me. That led me to advise the Claimant that he needed to focus his submissions on evidence that I had heard and/or read and that it would not be appropriate for him to introduce anything beyond that. The Claimant was adamant that he had made reference to diplomatic passport holders in documents he had submitted to the Respondent and, subsequent to the hearing, and following the departure of the Respondent's representatives, he noted to my clerk that a reference to diplomatic passport holders was contained on page 24 of the bundle in a document dated 19 March 2017. I took that to be a document sent by the Claimant to his MP, as he had confirmed in evidence that he had sought advice from his MP and the first line of this document referred to an advice surgery meeting on 17 March 2017.

4. Whilst I had merely been trying to ensure that the Claimant focused on issues that had been canvassed in evidence, I could see that he was concerned that, as he had submitted a document to the Respondent (and indeed to the tribunal as I could see that page 24 of the bundle was an attachment to an email of 21 July 2017 to the tribunal and to the Respondent's representative that was included in the bundle at page 21), it had therefore been admitted in evidence and could be referred to.

5. It seemed to me that the Claimant felt that it was significantly unfair that he was being denied the opportunity to refer to documents that he had submitted to the Respondent and the tribunal. However, I observe that that particular document was not brought to my attention during the hearing, was not referred to within the Claimant's claim form or witness statement, and nor was any reference made to diplomatic passport holders within the course of the hearing. Whilst this was a minor issue in terms of the overall progress of the hearing, a point I made to the Claimant at the time, I indicated to the Claimant that I could only form a judgment on the evidence that had been put before me, i.e. to which my attention had been drawn, whether orally or by reference to documents, and I carried out my deliberations on that basis.

Issues and law

6. The issues to be determined were set out at paragraphs 4 and 6 of the Case Management Summary I issued following a preliminary hearing on 28 June 2017. These were as follows:

*"4. **Whistleblowing dismissal***

4.1 Did the Claimant make a protected disclosure for the purposes of section 43B ERA?

4.2 Did the Claimant reasonably believe that the information disclosed tended to show that one or more of the specified types of malpractice under section 43B(1) ERA had taken place or was likely to take place?

4.3 Was the making of any such disclosures the reason or principal reason for the dismissal?

*6. **Remedies***

6.1 Insofar as the Claimant's claims are well-founded, to what declarations and/or compensation is the Claimant entitled?

6.2 If the procedure followed by the Respondent was in any way unfair, what difference would a fair procedure have made and should compensation be reduced accordingly? In this respect the Respondent will rely on Polkey v AE Dayton Services Limited [1988] ICR 142.

6.3 If the dismissal of the Claimant was unfair, did the Claimant contribute to his dismissal and should compensation be reduced accordingly?

6.4 Has the Claimant taken all steps to mitigate his loss and, if not, to what extent should any compensation be reduced?"

7. Relating those legal issues to the factual issues that needed to be addressed, the Claimant contended that he had made protected disclosures to several of the Respondent's employees and that the Respondent had dismissed him for having raised those disclosures and not for the reasons it advanced. He contended that the fact that he was suspended within a matter of hours of the allegations about his conduct having been raised, and the lack of a detailed investigation into those issues, showed that the Respondent had not dismissed him for the reason it had ostensibly advanced, i.e. his misconduct, but had been driven to dismiss him as a result of his disclosures.

8. On the other hand, the Respondent contended that the Claimant had not made any protected disclosures but that, in any event, his dismissal was on the grounds of gross misconduct without any form of connection to his alleged disclosures.

9. With specific regard to the issue of disclosures, I was conscious that the question of whether or not one or more of the matters of wrongdoing set out in section 43B of the Act was made out is not a question on which I was required to form a definitive view; I only needed to consider whether, in the reasonable belief of the Claimant, any disclosure he had made tended to show that one or more of the matters had arisen or was likely to arise and had been made in the public interest. I was conscious however, that I needed to consider the direction provided by the cases of Blackbay Ventures Ltd v Gahir [2014] ICR 747 and Eiger Securities LLP v Korshunova [2017] ICR 561 that, other than in obvious cases, where a breach of legal obligation is asserted, the source of the obligation should be identified and be capable of verification.

Findings

10. My findings relevant to the issues I needed to decide are, on the balance of probabilities, set out below. I observe that, as many of my findings and conclusions in relation to the question of whether a protected disclosure had been made require specific legal analysis, my findings do not completely follow what might be considered to be the usual, chronological order.

11. The Claimant commenced employment with the Respondent on 3 August 2016 as a Sales Consultant in its VAT Refund business. The Respondent is an international foreign exchange company which has, as part of its operations at Heathrow, which is where the Claimant worked, a business handling the refunding of VAT to passengers from outside the EU who have bought goods, and consequently have paid VAT on such goods, within the UK and, indeed, the broader EU. The Claimant worked initially at Terminal 3 and then, following a move at his request, at Terminal 5.

12. The VAT refund process is governed by a UK Border Force protocol which involves departing passengers bringing the goods purchased within the EU, together with appropriate forms from the retailers from whom the goods had been purchased, to kiosks operated by the Respondent. There the forms are checked and approved and the refund made, either in currency (whether sterling or overseas) or onto the passenger's credit card. The VAT refund operations apply both landside and airside but the Claimant was only ever approved to work landside.

13. Departing passengers have the option of obtaining a refund either in sterling or in their local currency. The indications from the Respondent's witnesses, which I accepted as it seemed to me a state of affairs which would be very likely to have applied, was that the majority of departing passengers opted to receive refunds in their home currencies. Where that happens, the Respondent processes the VAT refund and then converts the sterling sum into the passenger's required currency. The Respondent's witnesses were clear that the conversion of that currency would take place at the "sell" rate, i.e. therefore in such a way which meant that the

Respondent generated income from that exchange process, although that was a matter which formed part of the concerns raised by the Claimant.

14. Historically, the Respondent had operated one queue at the particular terminal covering all passengers, i.e. those wanting a refund in sterling and those wanting a refund in foreign currency. However, not long before the Claimant started work, the Respondent had changed to operating a split queueing system with one queue, which formed on the ground level and which led to passengers being dealt with at several kiosks on ground level, dealing with foreign exchange refunds; and with a second queue, situated on the first floor of the terminal and where a much smaller number of kiosks, only one or two, were operative, dealing with sterling refunds. There is however an ability for the Respondent to switch the kiosks in times of high demand for sterling.

15. In this part of its business, the Respondent, as well as employing sales consultants, employs queue hosts, some of whom are bilingual, particularly in Chinese and Arabic, to smooth the transit of passengers. These queue hosts provide advice to departing passengers as to which queue they should join and they then check the paperwork whilst the departing passengers are in the relevant queue in order to speed up the time spent at the relevant kiosk.

16. The Claimant's role as sales consultant was to examine the forms and approve them or otherwise, and to make the appropriate refunds at the kiosks, although he had worked, in the first few weeks of his employment with the Respondent, as a queue host.

17. The basis of the Claimant's claims that he had made protected disclosures was that he had raised concerns about the processes being applied within the VAT refund section, although the precise timing and detail of these concerns was not particularly clear from the evidence. Nevertheless, I discerned that the Claimant alleged that he had raised concerns in the following areas with certain employees of the Respondent as follows:

    (i) A concern that departing passengers were not told of their ability to have their VAT refund made in sterling and were forced to accept a refund in their home currency, exacerbated by the fact that the Respondent then applied the "sell" rate rather than the "buy" rate or the "spot" rate, which meant that the Respondent was gaining from that foreign exchange, and by the fact that rates of exchange were not displayed. The Claimant contended that the queue hosts were in fact providing false information to departing passengers about these points.

    (ii) A concern that some VAT refunds were processed when passengers were not actually entitled to them, referring for example to passengers who held dual passports, in the UK and a foreign country, and to student visa holders who should not have been allowed VAT refunds where there was more than 90 days remaining on their permission to remain in the UK (I presumed on the basis

that that length of unexpired time indicated that they were likely to return to the UK at some point in the future).

(iii) A concern about the Respondent's application of a "fast track" system whereby departing passengers would be dealt with on a priority basis on the payment of a fee. The Claimant described this as fraudulent and unethical.

18. The Claimant asserted that he raised these issues with two of his line managers, Mrs Tumber and Mr Gahla, and also with the retail sales manager, Mrs Lloyd, who was the manager of the team managers.

19. The position of the Respondent and its witnesses was that the issues raised by the Claimant did not amount to criminal offences or breaches of legal obligation or to any form of wrongdoing which could fall within section 43B of the Act although, as I have noted above, whether, in fact, any such wrongdoing occurred is not strictly required for a protected disclosure to have arisen.

20. All the Respondent's witnesses contended that they did not consider that the Claimant had made any form of disclosure about these matters to them. However, in their evidence, some of the witnesses did recall some discussions with the Claimant. In particular, Mrs Tumber recalled the Claimant raising an issue about a refund being processed when the Claimant was of the view that the particular passenger was not entitled to a refund, and also that the Claimant had asked if he could serve a pregnant departing passenger in priority to others. She did not however consider that these had been raised with her as concerns.

21. Similarly, Mr Gahla accepted that the Claimant had raised concerns that the Respondent was trying to get passengers to take local currency and not sterling and that the Claimant had contended that this was unfair. Again however, Mr Gahla, in addition to commenting that the Claimant had been incorrect in his assertion, did not accept that these were disclosures but felt that the Claimant had been raising issues about how the Respondent's business could be run more efficiently, for example by operating one queue as opposed to two.

22. Mrs Lloyd did not accept that any disclosure had been made to her or that she was aware of any such disclosure having been made although, as I note below, she was copied in on certain emails where broad assertions of wrongdoing were made by the Claimant in January and February 2017.

23. All the Respondent's witnesses were very clear that the "sell" rate was applied for exchange purposes and that that was the correct rate to apply. It was noted, and a copy of the relevant website page was in the bundle, that one of the VAT companies which provides the refunds had indicated that it applied the "buy" rate, i.e. the most generous rate for the customer. However, Mrs Lloyd pointed out that that applied in relation to currency exchanges made by that company on purchases made by a passenger in more than one European country with the view that the final exchange into

the passenger's home currency would be effected from the one final currency. I accepted that that was an accurate assessment of the situation, although again I note that the Claimant only had to reasonably believe the concern that he was making, not that it was strictly accurate.

24. Returning to the chronology of events, the Claimant sent texts to Mr Gahla and another colleague, known as Yemi, on 23 September indicating that he was leaving as he was not comfortable at work. There was no evidence before me as to whether the Claimant linked that indication to resign with any concerns he had raised with any of the Respondent's employees. The Claimant did send an email to Mrs Lloyd on that day noting that he did "*not wish to continue in unprofessional and toxic environment*", but said nothing more than that.

25. Whilst the precise details were not clear to me from the evidence, it appears that the Claimant was "talked round" by his managers, I presume Mr Gahla and Yemi, and he ultimately did not resign. He did however send a further email to Mrs Lloyd on 15 November 2016 stating: "*I am not comfortable and would like to move to T5*". It appears that that move was sanctioned and put into effect not long after.

26. It appears that during this period, the Claimant was performing effectively in his role and none of the Respondent's witnesses indicated that there had been any cause for concern regarding his performance. However, as I have noted above, the Respondent's operations are situated both landside and airside and, in order for employees to work airside, a particular pass has to be obtained from Heathrow airport. That requires an unbroken chain of references, covering the activities of the particular applicant in the form of academic study or work over the preceding five year period. That referencing process appears to have been commenced soon after the Claimant started work, and was primarily administered by the Respondent's HR service centre in Mumbai. The Respondent however also operates a three-strong team in the UK, headed by Mrs Byrne, who work on the obtaining and renewal of passes.

27. In relation to the Claimant, some issues were understood to exist in January 2017 over gaps in his university record, errors in a reference from one specific former employer, and the lack of a reference from another employer. I observe however that this last concern should not have existed in practice at this time as it later transpired that the particular former employer had provided a reference to the Mumbai service centre by email in October 2016. However, Mrs Byrne's evidence, which I accepted, was that the receipt of that reference had not been logged on the Respondent's system due to errors and therefore that she was not aware that it had been submitted.

28. On 12 January 2017, therefore, Mrs Byrne emailed the Claimant indicating that there was a need to clarify these three issues. This email was an informal and politely worded one which simply set out the issues that needed to be addressed and what the Respondent was doing to try to

rectify the problems. That included writing to the referee who had provided a reference with errors and asking them to recomplete the form, and writing to the referee from whom it was understood no response had been received with a repeated reference request. Mrs Byrne also sought the assistance of the Claimant to request a letter from HMRC which confirmed his employment over the previous five years, and asked for information about the ostensible gap within his university record.

29. The Claimant then spoke to Mrs Byrne on 17 January 2017 during which the Claimant told Mrs Byrne that the referee who had made errors in the response was not well educated and that the Claimant would go and visit him to help him complete it. During this conversation, Mrs Byrne told the Claimant not to do that as contact with a referee could invalidate any referenced then provided. I accepted Mrs Byrne's evidence of this conversation as it seemed to me that that was a sensible direction which did not seem to be at all out of the ordinary. In any event, the Claimant did not dispute the content of the conversation, albeit the events that followed indicated that he had interpreted it rather differently.

30. Indeed, the Claimant appeared to take significant umbrage to the content of his conversation with Mrs Byrne. Initially he sent an email to her on 17 January 2017 which, whilst setting out his dissatisfaction with the need to spend more time and energy on clarifying his references, was not impolitely worded. However, he sent a further email to Mrs Byrne the following day noting that he had "*decided to write direct to the relevant authorities and Unite after the allegation of influencing the reference*". He went on to say, "*I am done with internal attitude, and it's better to resolve it external in tribunal*".

31. The Claimant then sent a further email on the evening of 18 January 2017 to Mrs Lloyd and others stating: "*Reference to my recent conversation with Fiona and email from Marian Marsh* [one of the Respondent's other administrators], *I am taking the matter for external proceeding against Marian Marsh and Fiona. For me respect and personal integrity comes first and Fiona has raised the false allegation against me of influencing the referencing and now she must answer and bring the evidence in court of law to show the credibility of her allegation*." Mrs Lloyd forwarded that email to the Respondent's HR department and copied it to Mrs Byrne.

32. Mrs Byrne then on 19 January circulated an email internally, explaining her perspective on the telephone conversation she had had with the Claimant. In this email, Mrs Byrne contended that she had been very respectful to the Claimant and had explained that there was a need to request a new reference as there had been some errors. She confirmed that she had asked the Claimant not to contact the manager of the particular business as it would compromise the reference, and that she had stressed that the Claimant was not to have any input into it or any contact with the referee whatsoever. She confirmed however that she did not accuse the Claimant of anything and simply asked him not to make that contact.

33. The matter was then addressed within the Respondent's HR department with Clare Burns, its Head of HR, looking into the matter. She emailed the Claimant on 19 January 2017 setting out the Respondent's position that its administration team had just confirmed that references needed to be completed and that he, the Claimant, would not be able to fill them out on a referee's behalf as it would not then be accepted by Heathrow. Ms Burns confirmed that this was not the Respondent's ruling but was down to the Airport who "*were very strict around referencing*". In the email, Ms Burns indicated to the Claimant that if he wished to raise a grievance against any of the Respondent's team, then he should do so, detailing his complaint as well as his desired outcome and she would of course then arrange a meeting to discuss it.

34. The Claimant responded to that email saying that he rejected the statement that the Claimant would not be able to fill out the reference on the referee's behalf as "*again allegation on my integrity*". He went on to say that if Ms Burns was repeating that statement, then she herself was taking the same line as the administration team and had "*to provide the evidence in court of law*". Ms Burns replied shortly afterwards saying that she was still unclear of the Claimant's desired outcome, observing that he clearly wanted to raise a grievance but asking him to provide detail of his desired outcome.

35. The Claimant replied very shortly after in an email in capitals and bold print which included the following: "*YOU GUYS ARE SIMPLY INHUMAN WITH LOW THINKING"; "TELLING LIES YOU AND FIONA BOTH ARE LIARS… TELLING SHAMELESS ALLEGATION AND THEN ASKING ME WHAT IS THE PROBLEM…. HOW DO YOU FEEL IF SOMEONE PUT THE FALSE ALLEGATION ON YOUR INTEGRITY?" "I DO NOT SEE THAT YOU GUYS AWARE OF ANY WORK ETHICS… SIMPLY FRAUD AND INHUMAN*."

36. Before any response from Ms Burns, the Claimant sent a further email to her later on the evening of 20 January confirming that he was "*taking this case for civil proceeding against Travelex under Libel and Slander*".

37. It appears that on the same day, the Claimant contacted his MP, initially with an email noting that he was having difficulties at work and would appreciate some advice at a surgery, and then sending a more detailed letter in which he outlined to the MP the various concerns I have noted at paragraph 17 above that the Claimant asserted existed in the Respondent's business practices in relation to VAT refunds.

38. In the early hours of 21 January, the Claimant then sent a further email to the Respondent which stated in its introductory paragraph: "*Reference to your email, I am writing to confirm that I have forwarded the case for external arbitration and will use all the available forum in response to your false allegations against me. I am aware of your [Travelex] intentions and reasons behind the false allegation.*" The Claimant then went into some detail as to how he felt that his integrity had been impugned and that a

false allegation had been made about him. This email was copied to Mrs Lloyd. Ms Burns then circulated an email internally, including to Mrs Lloyd, noting that she had tried to solve the matter informally but that the Claimant "*wasn't playing ball*". She noted that the Claimant's latest email disturbed her and that she felt that they should invite him into a formal grievance meeting as he was still very unhappy.

39. It appears that Ms Burns attempted to contact the Claimant at this time but without success, and she then sent an email to him on 7 February noting that she had tried calling him and had sent texts to him asking him to contact her to arrange a meeting but "*to no avail*". Ms Burns indicated that she had completed some initial investigations around the Claimant's concerns which noted that the Claimant had been told that he should not help any of his referees to fill out the references. She went on to say that she was sorry that the Claimant felt that his integrity was being questioned but that this was not the intention and that it had not been suggested that he would falsify any reference requests but that the team just wanted to make sure that the Claimant was aware of the rules that London Heathrow apply, which are very strict. That apology was repeated together with a comment that no criticism of the Claimant's integrity had been intended. She informed the Claimant that he was a valued member of the Travelex team and that they would not want him to feel that his integrity had been questioned. The email closed by indicating that Ms Burns understood that the Claimant was back in work (he had been absent for a short period), that she hoped his query had been answered, but that if he wished to discuss it further then she should call him, but if not then she would assume that the matter was closed.

40. The Claimant did not reply to that email but then sent a further email to Mrs Byrne, Mrs Lloyd and Marian Marsh on 11 February saying: "*Reminder!!! Still waiting for reply and influence evidence or apology!!!*". Mrs Byrne forwarded this to Ms Burns and Ms Burns emailed Mrs Lloyd stating: "*I am not sure what he is playing at. Can you please speak with him? As far as I am concerned this matter is closed!?*". Mrs Lloyd confirmed that she had fully explained to the Claimant that they were not going to be able to reference him unless he supported them in getting that reference and that she had fully explained that under no circumstances had they ever questioned his integrity.

41. Ms Burns then sent an email on 14 February 2017 which referred to a telephone conversation that she had with the Claimant, although no evidence was put before me about the content of that conversation. The email however reads as though it was an attempt by Ms Burns to clarify the periods of time understood by the Respondent to be covered by references and where there were felt to be gaps. Ms Burns concluded the email by confirming that, in order for the Respondent to continue employing the Claimant, they would have to be able to fully reference him to get an airside pass and if they were unable to do that then they would have to look to terminate his employment as the information had been

outstanding for a significant period. Ms Burns indicated that they wanted the information to be clarified by 24 February 2017.

42. The receipt of that email clearly did not go down well with the Claimant as he sent two emails, one at 03:44 and one at 03:58 on 15 February 2017. In the first of these emails, the Claimant included the comment that "*Clare you, Marian Marsh and Fiona Byrne are not only professionally corrupt but also shameless liar*". The latter email (to which was attached the original reference provided in September 2016 which had been understood not to have been provided) stated: "*After this I do not need any apologies or words from professional corrupt people like Clare, Marian and Fiona. I have email in writing from Fiona and Marian and recent humiliation and insult by soul seller Clare. I am forwarding all the evidence for external proceeding and arbitration as I have received the humiliation and mental torture in past few months even in during the time when I was going through with critical phase of my family and emotional life*". He went on to say: "*Corruption is a disease like cancer and I have no doubts that Travelex got the cancer of corruption. People like Clare, Fiona and Marian are ready to sell the soul at the low airport rate!!!!! And I feel sorry for them*".

43. Those emails were copied to Marian Marsh and she submitted a grievance about them at 08:20 that morning. Only the first email had been copied to Mrs Byrne but she also raised a grievance by email at 11:03. She followed this up with a further email later in the afternoon.

44. The Claimant was then suspended later on the morning of 15 February 2017 and an investigatory meeting was held with Amena Sabir, a VAT Operations Manager, with Mrs Tumber present as a note-taker. It was put to the Claimant the concern that the content of these emails was significantly inappropriate and that he was to be suspended. That was confirmed in a letter dated 16 February 2017.

45. The Respondent then arranged a disciplinary hearing for 1 March which was to be held by Mrs Lloyd, supported by an HR business partner. The invitation letter confirmed that the Claimant could be accompanied and that the allegation was being treated as gross misconduct and could result in his dismissal. The Claimant's contention in this meeting, and indeed in his evidence before me, was that he did not consider that the content of his emails had been in any way insulting or offensive to the individuals addressed due to the fact that he was addressing them in their professional capacities and not personally. He accepted however that had he addressed them personally in that manner then it would have been insulting and offensive. Ultimately, that distinction was not accepted by Mrs Lloyd and she considered that the Claimant's actions amounted to gross misconduct and should lead to his dismissal.

46. The Claimant was informed that he was to be dismissed with immediate effect and that was confirmed in a letter of 9 March 2017. The Claimant was invited to appeal, which he did, and that appeal was considered by Mr

Dogra, accompanied by another HR business partner, on 23 March 2017. Ultimately, Mr Dogra did not consider that the appeal should be upheld and he wrote to the Claimant on 30 March 2017 confirming that and outlining his reasons.

47. With regard to the position after the Claimant's dismissal, the Claimant confirmed that he had, since September 2017, been studying for a Masters Degree in Aviation at university. He had in fact been intending to start that course in the previous February and had therefore intended to leave the Respondent's employment in any event, but, in light of the issues that had arisen at the time, he had deferred his entry to September 2017.

Conclusions

48. In relation to the issues I needed to address, I first had to consider whether the Claimant had made a protected disclosure or disclosures for the purposes of section 43B of the Act. This involved me considering whether the Claimant had disclosed information which, in his reasonable belief, was in the public interest and tended to show one or more of the matters set out at section 43B of the Act. In that regard, the Claimant in his witness statement appeared to try to cover all of the sections, including health and safety and damage to the environment. However, it seemed to me that the focus was on assertions, possibly with regard to criminal offences as he made reference to fraud on occasions, but primarily in relation to breaches of legal obligation.

49. I was conscious that I needed to consider whether the Claimant reasonably believed that he had made such disclosures and that it did not involve him needing to have been correct in those assertions. I was also conscious that whilst this was primarily an assessment of whether the Claimant subjectively believed that the wrongdoing had occurred, there was a need for me to consider objectively whether it was reasonable for the Claimant to hold the beliefs about the alleged wrongdoing that he did.

50. I did not subject that issue to minute analysis as my conclusions set out below were that, even if a protected disclosure had been made, I did not think that there was any form of knowledge on the part of the decision makers of any such qualifying disclosures that the Claimant had made. I also concluded that, even if there had been such knowledge, it did not have any bearing on the dismissal decision. I was satisfied that the Respondent was entirely justified in dismissing the Claimant for gross misconduct in light of the events that had occurred, such that the reason or principal reason for his dismissal was that gross misconduct and was not any form of protected disclosure.

51. With regard to the particular issue of whether or not the Claimant had made a protected disclosure, ultimately, whilst I was not satisfied that the Claimant had made protected disclosures in all the ways that he asserted, I felt that, on one occasion and to one individual, he had made a protected disclosure. However, I did not consider that the Claimant had articulated

the precise breaches of legal obligation he contended he had made on other occasions, and, applying the guidance set out in the Blackbay Ventures and Eiger Securities cases, I considered that the Claimant had not established that he had made all the protected disclosures he had alleged.

52. I considered that the Claimant had not made a disclosure to Mr Gahla with regard to what he believed were breaches of legal obligation in persuading departing passengers to take their VAT refunds in the form of their home currency rather than in sterling and that unfair exchange rates had been applied. There was no evidence to support any reasonable conclusion that passengers were denied the ability to take refunds in sterling, and the Claimant had not made any reference to any particular allegation of wrongdoing on the Respondent's part. I considered that it was more a case that he had a general unease about what he perceived to be unfair practices carried on by the Respondent.

53. I was also not convinced that the disclosure of issues regarding the fast track system was reasonably believed by the Claimant to demonstrate any breach of legal obligation. The Claimant himself in his evidence before me referred to the application of the fast track process as being unethical or immoral. It appeared to me however, from his evidence, that whilst the Claimant expressed his dissatisfaction over the application of the fast track process and did not think that it was fair on the basis that priority should have been given to pregnant, elderly or infirm passengers, it did not lead me to conclude that he felt that it amounted to a breach of legal obligation, and he certainly had not specified the source of any such obligation.

54. I was however satisfied that the Claimant had made a protected disclosure to Mrs Tumber regarding the inappropriateness of processing refunds for passengers who were not entitled. I considered that the Claimant's contention, even if factually incorrect, did demonstrate an assertion, in the Claimant's reasonable belief, that the UK Border Force's protocol was not being complied with, which I considered to have been a sufficient specification of the alleged breach. I also considered that there was no question other than that such an assertion had been in the public interest.

55. I did not conclude that the Claimant had made any form of protected disclosure to Mrs Lloyd. Whilst in his evidence the Claimant made passing reference to having made disclosures to Mrs Lloyd, as one of a number of people to whom he had raised issues, the only aspect that I found had been corroborated, whether by the witnesses themselves or the documents, was that the Claimant had had some discussions with Mr Gahla and Mrs Tumber. I did not consider that there was any evidence to enable me to conclude that the Claimant had made any form of disclosure to Mrs Lloyd. Certainly, the specific disclosure I concluded that the Claimant had made was not repeated to Mrs Lloyd or to anyone else.

56. Having identified that I considered that the Claimant had made a protected disclosure in the limited manner I have outlined above, I then needed to

consider whether the making of such a disclosure was the reason or principal reason for the dismissal. I did not conclude that that was the case.

57. To start with, I noted that the Claimant had indicated his wish to resign in September 2016 but had been, as I have described it above, "talked round" by his managers. I considered therefore that if the concerns raised by the Claimant had led to any form of desire on the part of the Respondent to retaliate against the Claimant or punish him for having raised any concern, then the last thing that the Respondent would then have done would have been to persuade the Claimant not to resign but to stay in employment.

58. I noted the Claimant's contentions that the speed with which he was suspended supported his case that the Respondent had an ulterior motive for dismissing him, namely his protected disclosures, and did not genuinely take action against him for the alleged gross misconduct. He made the point that his emails had been sent at around 4.00am, prior to him starting work at around 5.00am, but that the Respondent's management would not have been in work until around 9.00am and therefore the decision to suspend him at 10.30am could not have been legitimately taken.

59. However, in light of the content of the emails, I did not consider that there was anything untoward with the process adopted or anything which would have needed to have led to any form of delay on the part of the Respondent's management in taking the view that the Claimant's conduct in the form of the two emails was worthy of disciplinary investigation and worthy of suspension. Concern over the content of the emails would have been obvious at first reading, and a decision to take action in response to them could therefore have been taken in a matter of minutes. I did not therefore consider that there was anything at all untoward in his suspension. I was also satisfied that the respondent had carried out a reasonable investigation in all the circumstances.

60. Also, as I have noted above, I did not consider that any disclosure had been made to Mrs Lloyd, i.e. the decision-maker, directly and nor was she aware of the Claimant's discussions with Mrs Tumber. Similarly, there was no knowledge of any disclosure on Mr Dogra's part.

61. I noted that the Claimant did make some reference in an email of 19 February 2017 which was sent to Mrs Lloyd amongst others that he was *"NOT going to cheat the passenger and the law by accepting the orders or policies which are based and designed on immorality and corruption, which forced the passengers to get currencies on extremely low rates, processing the VAT refund without the correct knowledge to passengers due to their limitation and less ability to understand the system and the most important the time constraint to get the plane. Travelex is involved in corruption through mis-selling/misleading passenger, stealing passenger tax refund money without their knowledge and exploiting the fast track system to slash more money from passenger refund."*. However, even if

that was considered to amount to a protected disclosure, that came rather too late for the Claimant's purposes. By then, the decision to suspend had already been taken, and whilst there was a possible argument on the Claimant's part, that the content of that email of 19 February 2017 might have influenced Mrs Lloyd in her decision to dismiss, I did not consider that that had been the case.

62. On the contrary, I considered that the Respondent's actions, in the form of its investigation and decision-making, would have led to a fair dismissal in "ordinary" terms had the Claimant had sufficient service to pursue such a claim. It seemed to me that the Respondent had carried out a reasonable investigation which led to sufficient grounds for a reasonable belief that gross misconduct had occurred, and that the Respondent's managers, in the form of Mrs Lloyd, and Mr Dogra at the appeal stage, genuinely believed that the gross misconduct had occurred. Furthermore, I then considered that the dismissal for gross misconduct in the circumstances was not outside the range of responses open to a reasonable employer acting reasonably in the circumstances.

63. Overall therefore I was satisfied that the reason for the Claimant's dismissal was his gross misconduct. The corollary of that conclusion was that I did not conclude that any form of protected disclosure that the Claimant may have made was the reason, or even the principal reason, for his dismissal. I did not consider that it had any bearing on the decision to dismiss him and therefore I concluded that his claim should be dismissed.

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Employment Judge S Jenkins

Date: ……11 April 2018…..

Judgment and Reasons

Sent to the parties on: ...11 April 2018...

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For the Tribunal Office