EMPLOYMENT TRIBUNALS

Claimant: **Mr M Browning**

Respondent: **Crest Nicholson Engineering Limited**

Heard at: **London South** **On:** **30 October 2018**

Before: **Employment Judge Cheetham QC**
Mrs S Dengate
Ms N O'Hare

Representation

Claimant: did not attend
Respondent: Ms A Mayhew (counsel)

JUDGMENT

1. The claim of suffering detriments on the ground of making a protected disclosure is dismissed.

REASONS

1. The Claimant did not attend this hearing. He sent an email to the employment tribunal at 04.17 on the morning of the hearing. Although he said in the email that he felt sick and would not be attending, he did not ask for an adjournment and in fact he went on to explain why his claim should succeed. He concluded, "Please award me this case". In those circumstances, the employment tribunal did not read this email as an application for an adjournment.

2. The email also referenced "attached documents", but none were attached. However the tribunal read all of the documents referenced in an email of 9

October 2018 from the Claimant, including those headed "preface" and "confidential statement quote".

3. It did this before deciding whether to adjourn the case in any event. Having read all of these documents, the Respondent's witness evidence and the pleadings, it was clear what the issues were and that it all turned on the Respondent's explanations. The central facts were not in dispute. The tribunal therefore decided to proceed in the Claimant's absence. It heard evidence from Jane Cookson and Kerry-Louise Tiller for the Respondent, although it was Ms Cookson who provided most of the relevant information.

Findings of fact

4. The Claimant issued a previous claim in the employment tribunal (2300692/2016), which was settled in a COT3, signed by the parties in September 2016. As often occurs, there was an agreed form of reference in a schedule. As also often occurs, the reference said very little, beyond providing dates of employment. At paragraph 9 of the COT3, it stated that this agreed form of reference would be used in response to any request.

5. This further claim alleges two detriments, on the basis that the first claim in the employment tribunal was a qualifying disclosure (which is agreed).

6. The first detriment is an alleged failure to fill out what is called a "specific baseline personnel security" standard form. That was a reference form sent by the Claimant's prospective employer for the Respondent to complete. The Respondent accepts that it did not complete the form, but it did supply the agreed reference in compliance with the COT3 and its usual policy. There can be little dispute over that; the Claimant's complaint is essentially that it was not fair of the Respondent to rely on the agreed form of words.

7. The second alleged detriment is that Ms Cookson spoke to the head of customer care at Cara House, which was another prospective employer. In evidence, Ms Cookson denies that she did this and there is no evidence at all to suggest otherwise.

Conclusions

8. The Respondent did not fail to complete the form because of the qualifying disclosure, but because it was complying with the COT3. That was not a detriment and, in any event, it was not done because the Claimant had previously brought an employment tribunal claim. The second allegation has no evidential basis.

9. Therefore neither allegation of detriment as a result of making a protected disclosure succeeds and this claim is dismissed.

10. The tribunal can see why the Claimant now feels that the agreed reference was unhelpful. It says very little that would assist a future employer. Nevertheless, that was what the parties agreed in settling the original claim and there can be no criticism of the Respondent for continuing to rely upon

it when asked for a reference by the Claimant's prospective employers. Certainly, their decision to do so had nothing to with whistle-blowing.

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Employment Judge Cheetham QC

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Date 6 November 2018