



EMPLOYMENT TRIBUNALS

Claimant: Miss Barbara Pawlicka

Respondent: (1) Remploy Limited
(2) Care Quality Commission

Heard at: Leicester Employment Tribunal

On: 11.12.2018

Before: Employment Judge Dyal

Representation:

Claimant: In person

Respondent: (1) Mrs Goldsbrough, Solicitor
(2) Did not attend and was not represented, but produced documents and written submissions through Mr Easy, Solicitor

RESERVED JUDGMENT

1. The application for interim relief is refused.

REASONS

Introduction

1. The matter came before me today to adjudicate on the sole issue of whether or not the Claimant should be granted interim relief pursuant to s.128 – 130 Employment Rights Act 1996 (ERA) and if so upon what terms.
2. The documentation before me was as follows:
 - 2.1. From the Claimant, a series of documents sent to the tribunal in several emails, which the tribunal collated, paginated and distributed to all present at the hearing. The Claimant agreed that this bundle comprised the documents she had sent and wished to rely upon. She explained that she had wanted to send two further positive reviews of her work by CQC Inspectors but had been unable to do so because of the

formatting of the documents. She also handed up a short witness statement and some written submissions.

2.2. From Remploy Limited (R1), a bundle of documents and written submissions.

2.3. From the Care Quality Commission (R2), a bundle of documents and written submissions. The Claimant had not seen these documents until they were given to her at the hearing although they appeared to have been sent to her by email on 10 December 2018.

3. I had the benefit of oral submissions from the Claimant and Mrs Goldsbrough for the First Respondent.
4. After the Claimant made her initial submissions and Mrs Goldsbrough responded, I adjourned the proceedings for the Claimant to consider R2's bundle and submissions and to give her time to formulate a reply to them and to Mrs Goldsbrough's submissions. She asked for 15 minutes to do so but I gave her 30 to make sure she had a full chance to deal with such matters as she wanted to. When the proceedings resumed the Claimant made her reply, Mrs Goldsbrough replied to the Claimant and the Claimant had the final word with a short further reply.
5. I do want to commend the Claimant for the way she presented the claim today. The presentation was deeply impassioned yet appropriately restrained. I was impressed that she was able present her case in a coherent and structured way and to follow the guidance I offered her in relation to the issues she may want to address me on. I also asked her to slow down from time to time and she did so graciously.

Outline facts

6. I will give a very broad outline of the facts as they appeared to me today based on the material I have seen and the submissions I have heard, so as to give some context to the issues I have to decide.
7. R1 is a provider of specialist employment and skills support for disabled people and those with health conditions. R2 is the regulator of health and adult social care providers in England. The Claimant worked as an Expert by Experience ('ExE'). Her job involved assisting CQC inspectors to inspect institutions such as care homes. In essence, the idea is that somebody, the ExE, that has actual experience of using services, forms part of the inspection team so as to bring an additional layer of insight.
8. One issue that is very much in dispute is whether the Claimant was an employee of either R1 or R2 (both deny that she was). The Claimant was supplied to R1 and R2 by an employment agency. The contractual relations are not straightforward and I defer discussion of them to my analysis below.
9. The Claimant worked as an ExE regularly from November 2017 to October 2018.
10. On 9 October 2018, the Claimant attended an inspection at FH Care Home. The inspection did not go well and on any view relations between the Claimant and the Inspector fundamentally broke down. The detail of what happened is a matter of deep dispute. The Claimant is critical of the Inspector and the Inspector is extremely critical of the Claimant.

11. In the course of the inspection and in the following days the Claimant contends that she made a number of protected disclosures.
12. The Claimant was in effect suspended on 10 October 2018. On 20 November 2018, R1 notified the Claimant that it would cease to use her services and that she would receive a P45 from the agency that engaged her. She considers that this was a dismissal and was because she made protected disclosures.
13. On 21 November 2018 the Claimant presented a claim to the employment tribunal. The claim is wide ranging and engages a number of the tribunal's jurisdictions. The detail of the claim will need to be clarified in due course. For the present it is enough to say that the claim included the instant application for interim relief.

Law

14. The ERA confers protections on certain types of whistleblowers, broadly, those who make protected disclosures within the meaning of s.43A and who are workers within the meaning of s.230(3) ERA or s.43K ERA.
15. By s.47B ERA there is a right not to suffer a detriment. Detriment includes dismissal. However, the dismissal of employees (within the meaning of s.230(3)(a) are a special case. They are expressly excluded from s.47B(2) and are dealt with separately in part X of the Act which creates a special right, limited to employees, not to be unfairly dismissed. To emphasise, employees, and employees alone, have rights under part X.
16. Section 128 – 130 ERA 1996 make provision for interim relief. This is a remedy for (certain types of) unfair dismissal. There is no parallel remedy for workers that are not employees, even if those workers have suffered a detriment for making a protected disclosure and even if the detriment is dismissal.
17. It is worth setting out s.128 in full and part of s.129 ERA:

128 Interim relief pending determination of complaint.

(1)An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(a)that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i)section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii)paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b)that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.

(2)The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3)The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) *The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.*

(5) *The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.*

129 Procedure on hearing of application and making of order.

(1) *This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—*

(a) *that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*

(i) *section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or*

(ii) *paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or*

(b) *that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.*

(2) *The tribunal shall announce its findings and explain to both parties (if present)—*

(a) *what powers the tribunal may exercise on the application, and*

(b) *in what circumstances it will exercise them.*

(3) *The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—*

(a) *to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or*

(b) *if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.*

18. As a matter of construction it is clear that when applying the likely test in s.129(1), one of the things that must be likely is that the claimant will be found to be an employee of the respondent against whom she seeks interim relief (at least where status is controversial). This is implicit since neither s.103A nor Part X ERA generally will apply at all, unless the Claimant turns out to be an employee.

19. In the context of s.129(1) ERA, the word 'likely' means 'a pretty good chance' (*Taplin v Shippam Ltd* [1978] IRLR 450). There has been some controversy about this construction of the statute. However in *Dandpat v University of Bath* [2009] UKEAT/0408/2009, unreported, 10 November 2009, Underhill J (as he was) said this:

20. ... Taplin has been recognised as good law for 30 years. We see nothing in the experience of the intervening period to suggest that it should be reconsidered. On ordinary principles we should be guided by it unless we are satisfied that it is plainly wrong. That is very far from being the case. We do in fact see good reasons of policy for setting the test comparatively high in the way in which this tribunal did in the case of applications for interim relief. If relief is granted, the respondent is irretrievably prejudiced because he is required to treat the contract as continuing and pay the claimant until the conclusion of the proceedings: that is not a consequence that should be imposed lightly.'

20. In *London City Airport v Chacko* [2013] IRLR 610, Recorder Luba QC, said this:

23...The relevant statutory test is not whether the claimant is ultimately likely to succeed in his or her complaint to the employment tribunal but whether 'it appears to the tribunal' in this case the employment judge 'that it is likely'. To put it in my own words, what this requires is an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swiftly convened summary hearing at first instance which must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim.

21. Thus the tribunal considers that it cannot order interim relief unless it considers it likely that the tribunal at trial will find that:

- 21.1. the Claimant was an employee of R1 or as the case may be R2; and
- 21.2. that the Claimant made one or more protected disclosures; and
- 21.3. that the protected disclosure(s) was/were the reason or principal reason for dismissal.

Analysis of employment status

22. In order for the Claimant to have been an employee of either respondent there would need, first of all, to have been a contract between her and R1 or R2. There can be no contract of employment without a contract.

23. While I consider that there is a possibility of the tribunal finding that there was a contract (indeed a contract of employment) between the Claimant and R1 or R2 I cannot say that I think this is likely. Indeed, on the material before it seems unlikely for the following reasons.

24. On the face of it the contractual relations are as follows:

- 24.1. The Claimant entered an express written agreement with an employment business, Equal Approach Limited, in August 2017. I have read the contract carefully and its express terms appear to explain well why the Claimant provided services to R1/R2, was paid for them (by Equal Approach) and yet had no contract with R1/R2. In summary, the contract is what might very loosely be described as an agency worker contract. The contract identifies the Claimant as an agency worker engaged by Equal Approach. It identifies the Claimant, in effect, as a 'limb b' (i.e., s.203(3)(b) ERA) worker of Equal Approach and negatives employee status. It envisages the Claimant being supplied by Equal Approach Limited to R1 for R1 to in turn supply her to R2 to complete inspections as an ExE. The contract envisages the Claimant being paid by Equal Approach for such assignments (inspections) as she may carry out. There is no obligation on the Claimant to accept any particular assignment nor on Equal Approach to offer one. (I note the obvious point that the Claimant does not seek interim relief against Equal Approach.)
- 24.2. R1 in turn has an agreement with Equal Approach pursuant to which the latter supplies the former with agency workers on particular terms.
- 24.3. R1 and R2 in turn have an agreement as between them for R1 to supply R2 with ExEs on particular terms.

25. I do recognise (and indeed raised with the parties) the fact that express written contractual relations are not necessarily determinative of the true contractual relations. It is well established that if a written contract does not reflect the reality of the situation it may be appropriate for an employment tribunal in some circumstances to find that the true terms of the agreement (including the identity of the parties to the agreement) are different to the written terms.
26. Indeed, in a multi-party situation such as the one here, in certain circumstances it is open to a tribunal to imply a contract of employment between the worker and agency, intermediary or end-user. However, this is not done lightly and the test is ultimately one of necessity. The leading case remains *James v London Borough of Greenwich* [2008] IRLR 302. A neat summary of the law is as follows:

30. The real issue in 'the agency worker' cases is whether a contract should be implied between the worker and the end user in a tripartite situation of worker, agency and end user rather than whether, as in 'the casual worker' cases where neither the worker nor the end user has an agency contract, the irreducible minimum of mutual obligations exists. In the agency worker cases the problem in implying a contract of service is that it may not be necessary to do so in order to explain the worker's provision of work to the end user or the fact of the end user's payment of the worker via the agency. Those facts and the relationships between the parties are explicable by genuine express contracts between the worker and the agency and the end user and the agency, so that an implied contract cannot be justified as necessary.

27. The Claimant referred to a number of features of how the relations worked in practice which she considers mean that she was an employee:
- 27.1. She worked as an ExE regularly from November 2017 onwards (the contract was entered in August 2017 but the CRB checks etc were not finalised until November 2017);
- 27.2. Her services were requested on a number of occasions by officers of both R1 and R2 and she had felt some level of obligation to carry those inspections out so as not to let people down;
- 27.3. She was suspended for a long period of time (about eight weeks);
- 27.4. At the time of suspension she had further assignments and training booked which were not honoured and this was a breach of contract;
- 27.5. There was indirect discrimination by the Inspector on 9 October 2018;
- 27.6. She was dismissed;
- 27.7. Since she had worked for more than 12 weeks as an ExE she became directly employed and was entitled to equal treatment.
28. I listened carefully to what the Claimant had to say but ultimately I do not think it is likely that the tribunal will imply a contract of employment between the Claimant and either respondent.
29. The fact that an agency working arrangement is regular and persists for a long period of time is a wholly inadequate basis for implying a contract of employment between the agency worker and the end-user. The frequency of work and longevity of the arrangement is a very weak indicator (or no indicator at all) that the express arrangements do not/have ceased to explain the provision of work and pay for that work.

In any event the period of work and frequency of work here were moderate (about a year; a few assignments per month at most).

30. The fact that the Claimant's services were specifically requested by R1/R2 on a few occasions and that she felt a degree of obligation to accept those inspections is also a weak factor. End users very often have a preference for particular agency worker where the worker has built up / or otherwise has a particular experience or skills and this is not something that of itself undermines the express contractual relations in this case. While I accept that the Claimant felt a degree of obligation to accept particular assignments I think this was a matter of professionalism/honour and not legal obligation.
31. The nature of the particular contractual relations were such that the contract between the Claimant and Equal Approach specifically envisaged the Claimant being supplied to R1 and through R1 to R2 (unlike many agency worker agreements which envisage the worker working for multiple end users and do not specify the end-user). In those circumstances the fact that the Claimant was effectively suspended and later her further services dispensed with, when serious conduct issues were alleged in relation to her dealings with R2, is also a weak factor. It does not appear to me to go a long way towards undermining the applicability of the express contractual relations.
32. There was a dispute before me today about whether the letter from Mr Draycott dispensing with the Claimant's services on 20 November 2018 had been headed with words to the effect of 'letter of dismissal' or not (there were two different version of the letter in the papers, one with and one without that heading). Even if the letter was thus headed, it would not change my view. The sense of the letter is clear: that R1/R2 are ceasing to allow the Claimant to preform further work for them and as a result Equal Approach will be dismissing the Claimant. If the letter is headed with 'dismissal' it is at best a factor in favour of the Claimant's case but comes nowhere near persuading me (alone or together with the other factors) that the tribunal will find that she was employed by R1 or R2.
33. With respect I do not think that either the indirect discrimination or the breach of contract points took the employment status argument any further. I found the indirect discrimination point hard to follow generally. I found the link between on the one hand, the indirect discrimination and/or breach of contract claim and on the other hand, employment status, tenuous.
34. Finally, although the Agency Workers Regulations 2010 do create certain rights to equal treatment in respect of certain matters following a 12 week qualifying period, as well as conferring some other statutory rights, they do not create contractual relations between parties. So I do not think the 12 weeks point is a good one.
35. All in all then, looking at matters in the round, I see no more than a small possibility of a contract of employment being implied between the Claimant and R1 or R2. I do not think it is likely that the tribunal will find that the Claimant was an employee of either R1 or R2. (I observe as an aside that while a contract of employment is an essential requirement in respect of a claim by reference to s.103A ERA, it is not an essential requirement in relation to a whistleblowing detriment claim by reference to s.47B ERA).

Protected disclosures

36. I think it is likely that the tribunal will find that the Claimant made protected disclosures within the meaning of s.43C ERA. I spent some time today identifying with care what disclosures the Claimant relied upon and they are as follows:
- 36.1. On 9 October 2017 the Claimant made a disclosure orally to Ms Sarah McLennan the CQC Inspector, during the course of the inspection. She said words to the effect that 'we are dealing with vulnerable people that have no families, they should be interviewed in a more private space because of what we are talking about.' The people in question are Service Users ('SUs') at the Fairhaven Care Home and have significant mental health problems. The interviews ranged over sensitive and confidential matters. The Claimant's case is that the interviews were carried out in a communal area in which they could be overheard. She says that she thought the way the interviews were carried out were in breach of the duty of care towards the SUs and she made the disclosure out of concern for the SUs and wanting to improve their lot.
 - 36.2. On 9 October 2017 the Claimant had a conversation with Mr Draycott, ExE Coordinator, of R1. He was something similar to a line manager. She made a disclosure similar to the foregoing and said that the situation was a breach of the SUs' human rights to privacy and a breach of data protection law. She made the disclosure to Mr Draycott because she was concerned about the SUs, and about R1 meeting, or as the case may be breaching, its obligations to them.
 - 36.3. On 9 October 2017, the Claimant sent an email to Aman (Coordinator of R1). She made a similar disclosure about the privacy issue. She also made a disclosure that one of the SUs appeared uncared for and unclean. She had in mind the breach of the same legal obligations as above as well as health and safety and wanted to make Remploy aware of the situation.
 - 36.4. On 11 October 2017, the Claimant emailed Mary Cridge of the CQC, who is a senior person in inspections and also the 'Speak-up Guardian'. She made a similar disclosure in relation to the interviewing of SUs in an open area. She had in mind the same legal obligations as above and wanted to make the CQC aware of what she considered to be breaches of them.
37. I found the Claimant's impassioned account of the disclosures that she made, the context in which they were made, her beliefs about the disclosures and reasons for making them all extremely compelling. The Claimant explained in general terms to add to the specifics she gave, that in making the said disclosures she was particularly concerned about respect for the privacy of SUs given the context of the interviews happening in what was the SUs' home. She understood privacy and respect for the home to be aspects of human dignity and human rights (which indeed they are).
38. I think it is very likely that the tribunal will find that disclosures were made along the lines set out above. The third and fourth disclosures are in writing (emails). The content of the first and second are in broad terms corroborated by the documents before me and I anticipate that the Claimant will give a compelling account of them.
39. I think it is also likely that the tribunal will find that the Claimant made the disclosures with a reasonable belief that she was disclosing a breach of legal obligations and the reasonable belief that she did so in the public interest. So, I think it is likely these will be found to be qualifying disclosures within the meaning of s.43B ERA.
40. Further it seems likely to me that the disclosures will be held to fall within s.43C(1)(b)(ii) so are likely to be not only qualifying disclosures but also protected ones. They may be protected disclosures for other reasons too.

41. I noted Mrs Goldsbrough's point that there is guidance to ExEs that they should not generally enter SU's bedrooms with the implication being that the Claimant could not reasonably have believed that it was wrong to interview SUs in a communal area. I saw the point but did not think it a very persuasive one. The Claimant may have been wrong to suggest that the interviews should take place in bedrooms (if she did) but that does not undermine her view/disclosures that the interviews should not have taken place openly in communal areas. There are ways of having a discrete interview without doing so in someone's bedroom. There is not a binary choice between breaching privacy and holding an interview in a bedroom.

Reason for dismissal

42. It is necessary to set out a little more of the apparent facts in order to conduct this analysis.

43. As noted above: on 9 October the Claimant attended an inspection of FH Care Home. The CQC inspector was Sarah MacLennan. Events of that day are deeply disputed. It is clear that there was a serious breakdown in relations between the Claimant and the Inspector which played out during and after the inspection. Each made serious allegations about the other's conduct.

44. After the inspection, the Claimant spoke to Mr Draycott on the telephone. Mr Draycott also spoke to Ms MacLennan. His note of those conversations (which the Claimant does not accept is entirely accurate) is in the bundle before me. The notes suggest that both the Claimant and Ms MacLennan made serious complaint about the other in their conversations with Mr Draycott.

45. The Claimant made the protected disclosures that I noted above.

46. On 10 October 2018 the Claimant was, effectively, suspended pending an investigation. The assignments she had been offered and accepted were cancelled as was some training she had been booked on. And she was not allowed to take any other assignments.

47. On 15.10.18 the Claimant produced her inspection report, a copy of which I have seen.

48. On 30.10.18 Ms MacLennan produced her written feedback on the Claimant. It contained some extremely serious criticisms of her. I set some of these out below.

49. On 20.11.18: Mr Draycott wrote to the Claimant and said: *"as a result of feedback provided by the inspector and in discussion with yourself, we have found on the balance of probability, your conduct during the inspection was not to the required standard of both Remploy and the CQC as set out in the ExE Code of Conduct, specifically that you did not act reasonably, fairly and treat people with courtesy. He went on "...we therefore have no option but to cease offering you inspection events as an Expert by Experience through Remploy. Equal Approach will shortly issue you with your P45 and any outstanding payment for events will be made."*

50. If the tribunal find that the Claimant was an employee and that she made protected disclosures, this letter will surely be construed as notice of summary dismissal. The question will be what was the reason for the dismissal?

51. There is no doubt that there was cogent, even if disputed, evidence of serious wrongdoing on the Claimant's part. On the Inspector's account of events at the inspection of 9 October 2017, the Claimant, among other things:
- 51.1. did not follow inspector's instructions to remain in communal areas;
 - 51.2. was aggressive with SUs during the inspection and did not accept that people could choose whether speak to her;
 - 51.3. was critical of the appearance of staff: that they wore jeans, that they had dyed hair and tattoos and she made such criticism within earshot of others at the inspection;
 - 51.4. kept saying 'this place is awful', 'everyone is really nasty';
 - 51.5. said 'this is a dreadful place' and 'the manager is awful' in earshot of the manager;
 - 51.6. threw her bag in the Inspector's direction and hurled insults at the Inspector;
 - 51.7. was incredibly aggressive and angry;
 - 51.8. referred to a male resident's choice to wear a dress as not ok;
 - 51.9. said to the Inspector that she (the Inspector) looked a state, that she was a disgrace, 'what the hell were the CQC doing employing someone like her?', and made derogatory comments about the size, weight and hair colour of the Inspector.
52. The central issue for the tribunal will be whether it was a finding that these allegations of serious misconduct were well-founded or whether it was the Claimant's protected disclosures that was the reason or principal reason for her dismissal.
53. In essence the Claimant's case will be that the Inspector's allegations are largely untrue or misrepresent what happened on the day, that she told Mr Draycott this, and that there were various procedural failures on the Respondent's part in dealing with the allegations against her. She did not get clear reasons for her suspension, the allegations of misconduct were not clearly broken down, she did not see the Inspector's report, there was no disciplinary or appeal hearing, and she did not have a full and fair opportunity to answer the allegations made against her. Further, her record as an ExE was generally very good. There was the odd other negative piece of feedback but overwhelmingly other Inspectors were pleased with her work on other inspections.
54. I do not think that the Claimant's case is entirely without merit and I can see that there is an issue to be determined at trial as to the true reason for the respondents dispensing with the Claimant's services. However, I could not go anywhere near so far as to say that the tribunal is likely to find that the true reason was that the Claimant had made a protected disclosure(s).
55. Firstly, the conduct of the Claimant as described by the Inspector was very serious misconduct. It is the sort of misconduct that *if* found proven would make termination totally unsurprising. There will be plenty of material before the tribunal, then, of an admissible and credible reason for dismissal. The Inspector's evidence, while hotly disputed by the Claimant, I think reads pretty persuasively. Certainly, there is a very strong argument that it was open to the decision makers to prefer Ms MacLennan's evidence to the Claimant's and having done so that dismissal was the obvious course. This will be the Respondents' case and I anticipate that it will be formidable.
56. Secondly, while it is undoubtedly true that the process leading to the Claimant's dismissal lacked some of the features that one would ordinarily expect to see in a fair

dismissal (e.g. written charges, sight of the evidence against, a disciplinary hearing and an appeal hearing) I doubt whether the tribunal will draw an inference that the protected disclosures were the reason or principal reason for dismissal. This was a case in which the Respondents did not regard the Claimant as an employee and it seems to me more likely that the tribunal will conclude that this explains the lack of full process. It seems less likely to me that the tribunal will infer that the lack of a full process masks an ulterior reason for dismissal. (However, and this is another point, I can well understand why, from the Claimant's perspective she feels aggrieved: she lost a line of work that meant a great deal to her and did not, it seems, have a full opportunity to defend herself against the allegations of wrongdoing.)

57. Thirdly, the protected disclosures themselves tend to impugn the Inspector for the way the inspection was carried out on that particular occasion as well as, to a degree, the quality of FH Care Home. It is not at all clear why, on the evidence in front of me, that would lead Mr Draycott or R1 or R2 more generally to take drastic action against the Claimant. It is just not clear why they would be so put out by the Claimant's criticisms of the Inspector and/or the home. I obviously recognise that it is conceivable that Mr Draycott, or R1 or R2 more generally might overreact to the protected disclosures and victimise the Claimant for making them. But what I cannot in the material before me see is any good reason to think that it is likely that this is what the tribunal will find actually happened. The alternative explanation for dispensing with the Claimant's services, that the Claimant was found on balance to have misconducted herself at the inspection, seems a more likely conclusion.

Conclusion

58. All in all, I do not think it is likely that the tribunal will find that the Claimant was an employee of R1 or R2 nor, if she was, that the reason or principal reason for dismissal was that she made one or more protected disclosures. The application must therefore fail.

Employment Judge Dyal

Date

12.12.2018