



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Atif Kamran  
**Respondent:** Learning Enterprises Organisation Ltd  
**Heard at:** Reading **On: 5 and 6 February 2019**  
**Before:** Employment Judge Gumbiti-Zimuto  
Members: Mrs C M Baggs and Mr N Singh

## Appearances

**For the Claimant:** Mr D Lewis (Counsel)  
**For the Respondent:** Not attending and not represented

## REASONS

*[Reasons for Judgment provided at the request of the claimant.]*

1. On the 5 June 2017 the claimant presented a complaint of unfair dismissal, race discrimination, religion and belief discrimination, notice pay, holiday pay and failure to provide written particulars of employment. On the 20 July 2017 the respondent denied all the claimant's complaints.
2. The parties agreed an initial list of issues to be decided in the case at a case management preliminary hearing on 29 August 2017. The claimant subsequently withdrew his claims of discrimination under the Equality Act 2010. In January 2018 the parties agreed a revised list of issues as follows:

### **"Unfair dismissal**

1. What was the reason for the claimant's dismissal?
  - 1.1 The respondent says the reason was gross misconduct.
  - 1.2 The claimant says that he was dismissed because he had made protected disclosures.
2. Was the reason for dismissal a potentially fair reason under section 98 (2) of the Employment Rights Act 1996 ("ERA")?
3. If dismissed for a potentially fair reason, pursuant to section 98 (4) ERA, in all the circumstances of the case (including the size and administrative resources of the respondent) did the respondent act reasonably or unreasonably in treating the reasons as being a sufficient reason for dismissing the claimant? In particular:

- 3.1 Did the respondent have a genuine belief that the claimant was guilty of misconduct?
- 3.2 Did the respondent have reasonable grounds upon which to base such a genuine belief in the claimant's gross misconduct?
- 3.3 Did the respondent carry out as much investigation as was reasonable in all the circumstances of the case?
- 3.4 Was the respondent's decision to dismiss proportionate? i.e. did it fall within the 'band of responses' open to the respondent?
4. Remedy ... (the claimant now only seeks a basic award)

**Whistleblowing – automatic unfair dismissal (s103A ERA 1996)**

The claimant contends he made qualifying disclosures as set out at paragraph 7 of the claimant's details of claim (and as further particularised by the claimant by further particulars dated 17 October 2017)

5. Did the claimant reasonably believe these disclosures to the respondent were made in the public interest and tended to show that the respondent had committed was committing or was likely to commit a criminal offence, or that it had failed, was failing or was likely to fail to comply with a legal obligation to which it was subject as set out at paragraph 27 of the 'details of claimant's claim'?
6. Did these constitute protected Disclosures under s.43A of the ERA read together with and s.43B(1) ERA?
7. If so, then if this was the reason (or if more than one, the principal reason) for the claimant's dismissal, the fact that he made any such protected disclosures, does this make the dismissal automatically unfair contrary to section 103A Employment Rights Act 1996?
8. Remedy  
The claimant only seeks a Basic Award under s.119 ERA 1996 in respect of his alleged automatic unfair dismissal.

**Failure to provide a written statement of employment particulars**

9. Was the claimant entitled to be provided with a written statement of employment particulars pursuant to s1 ERA 1996?
10. Did the respondent fail to provide the claimant with a statement of employment particulars, contrary to s1 ERA 1996?
11. **Remedy**  
What compensation is the claimant entitled to pursuant to s38 EA 2002, if any?"

3. The case was initially listed for a hearing to take place over seven days between the 16 and 24 July 2018. Regrettably the case was postponed because there was no judge available to hear the case. The case was then listed to take place on the 3 to 11 December 2018, however, these were dates that the parties had given as dates to avoid listing the case. The case was relisted to take place on the 4 to 12 February 2019.
4. On 1 February 2019 the respondent's legal representative wrote to the Tribunal and to the claimant informing them of the following; the

respondent had resolved at aboard meeting that day that it was insolvent or at high risk of insolvency; that it cannot incur the further liabilities which would arise from representation at the hearing; the respondent's principle witness is prevented from leaving Pakistan by a no fly order and could give evidence only by internet link, requiring the respondent to incur further cost; the respondent cannot offer evidence through attendance at the hearing; the respondent's solicitors were no longer instructed by the respondent.

5. There is no application for a postponement from the claimant or the respondent. No officer or employee of the respondent attended to represent the respondent. None of the respondent's witness attended to give evidence three of the respondents four proposed witnesses are based in the London or Oxfordshire: although all had made statements, none of the statements were signed.
6. The respondent's representative's final act was to arrange to be delivered to the Tribunal the agreed trial bundle consisting of 7 ring binders and lever arch files containing over 1913 pages of documents. Included were two volumes of witness statements. Signed statements from the claimant and his witnesses and unsigned statements from the respondent's witnesses. We have read the claimant's witness statements but have not considered the respondents statements which are unsigned and not otherwise verified by the makers of the statements.
7. The claimant attended the Tribunal to give evidence before us: because the case was not contested we did not require the claimant to give live evidence, but he was available to do so. The claimant's witnesses, Geraldine Aquino, Michelle Smith and Lisa Salinas were not present on the 5 and 6 February 2019 but were available to attend to give live evidence on the 11 February 2019. This is the arrangement that had been agreed by the parties. The Tribunal did not require them to give live evidence we did however take into account the contents of their statements. The Tribunal also consider a selection of documents that we considered useful to reaching our decision.
8. We made the following finds of fact:
  - 8.1 The respondent is a multi-level marketing company selling e-learning, e-tutorial and online literature and technology products, and trades globally across 180 different countries.
  - 8.2 The claimant, together with Mr Dan Andersson, is a co-founder of the respondent. It is the claimant's understanding that there was to be a 50/50 equal partner basis between the claimant and Mr Andersson in relation to profits, capital value and decision making. Mr Andersson differs slightly with the claimant in that he contends that in respect of voting rights he was to be the senior partner with 51% controlling voting rights.

- 8.3 The claimant has been an employee of the respondent since 6 March 2012. He is also a director and shareholder.
- 8.4 By 2016 the claimant and Mr Andersson had been in discussion around matters relating to the shareholding in the respondent. They eventually agreed to enter into a Memorandum of Understanding setting out the position in respect of shareholding and remuneration.
- 8.5 The claimant's job title was initially that of Global Marketing Director (in 2015 the title was changed to Chief Marketing Officer), Mr Andersson was the Chief Executive Officer.
- 8.6 By 2016 the claimant's relationship with Mr Andersson had begun to deteriorate. The matters which caused the deterioration arose from Mr Andersson's behaviour which led to the claimant making a number of alleged protected disclosures.
- 8.7 The claimant was concerned that the respondent was in breach of its obligations by issuing more LEO coins (a digital asset) in the members back office as liability than the actual holding of LEO coins to meet this liability.
- 8.8 The claimant and Mr Andersson met in September 2016 when the claimant informed Mr Andersson that he believed that the respondent's holding was inadequate as its LEO coin liability far exceeded the number of coins held.
- 8.9 The claimant says that in making this disclosure he had a genuine belief the respondent was failing to comply with its legal obligations to its members. The claimant says that the disclosure was in the public interest because it was specifically in the interests of more than 250, LEO members who were at risk of being adversely affected by the in balance in the LEO coins holding. The claimant considered that it also affected the interests of shareholders and employers in the event that the respondent became insolvent.
- 8.10 In period April to August 2016 the claimant sent email to various board members in which he stated that £300,000 was unaccounted for from Swedish Sales. The claimant raised the issued with Mr Andersson in a meeting. The issue rumbled on throughout the rest of 2016 with the claimant raising the issue with board members and Mr Andersson.
- 8.11 The claimant says that in making this disclosure he was acting in the public interest as the respondent's shareholders were at risk of being adversely affected by the potential accounting errors and or misappropriation of funds. The claimant states that he believed that Mr Andersson and another were failing to comply with their

statutory duty, fiduciary duties and obligations, and possibly that a criminal offence had been committed.

- 8.12 At board meeting on the 13 September 2016 the claimant informed the board that he believed that large sums of money, c. £3,000,000 to £4,000,000 was missing for the respondent's turnover since 2012 over an above the level of bad debts. The board resolved that a reconciliation into cash sales be urgently carried out. The claimant continued to raise his concerns through October and November 2016.
- 8.13 The claimant states that he made the disclosure about the financial irregularity in the public interest as the respondent's shareholders were at risk of being adversely affected by the potential accounting errors and/or misappropriation of funds. The claimant believed that Mr Andersson and another were failing to comply with their statutory and fiduciary duties and obligations and/or that a criminal offence was being committed.
- 8.14 In January 2017 the claimant wrote to Mr Andersson setting out concerns about Mr Andersson's directors loan account. The claimant stated that Mr Andersson might have £300,000 in director's loans which had not been approved by the board. The claimant stated that it was the duty of the Chief Finance Officer and Mr Andersson to obtain the approval of the board.
- 8.15 In making the disclosure the claimant believed that it was in the public interest because the matters alleged could adversely affect the shareholders and that a criminal offence was being committed. The claimant states that he "genuinely believed that Mr Andersson was in breach of his statutory and fiduciary duties as a director of the respondent".
- 8.16 On the 28 November 2016 and the 30 November 2016 the claimant sent an email to Mr Andersson and the respondent's board of directors notifying them that the appointment of two directors was not legal as they had not been appointed by ordinary resolution of be decision of the directors.
- 8.17 In making the disclosure the claimant believed that it was in the public interest because of a duty to the public at large to ensure that the respondent's records are accurate, and that directors with statutory liability and fiduciary duties are awfully appointed.
- 8.18 The claimant travelled to Canada in January 2017. On 12 January 2017 the claimant made a complaint to Mr Ramzan and Ms Aquino that Mr Andersson has authorised 1.87 million Euro for land worth 1.1 million Euro and that he intended to pay a further 600,00 Euro to secure release of the land in the respondent's name or LEO

Tower's name. The claimant stated that he believed that "backhanders and bribes were being paid in relation to this land".

- 8.19 Also whilst in Canada on 17 January 2017 the claimant made complaints to Mr Dillon in which he informed him about missing money from Sweden sales, the potential £3-4 million missing from global sales, Mr Andersson's role in blocking or delaying global sales reconciliation, the unlawful appointment of directors by Mr Andersson, unauthorised withdrawal of funds from the respondent's bank account and the Portugal land deal in which the claimant states that he believed Mr Andersson had received a bribe.
- 8.20 The claimant believed that the disclosure was in the public interest and also in the interest of shareholders and LEO Tower and anyone who sought to rely on the accuracy of the accounts which at the time might be inaccurate due to bribes being paid. The claimant believed that Mr Andersson had been dishonest in his dealings and in funding an acquisition from the respondent's assets. The claimant believed that Mr Andersson was failing to comply with his statutory duties, fiduciary duties and or that a criminal offence was being committed.
- 8.21 On the evening of 26 January 2017 the claimant received an email from Mr Andersson in which he was informed of his summary dismissal with immediate effect. The claimant had no prior warning. The allegations justifying the dismissal had not been investigated by the respondent. The claimant was not taken through any procedure by the respondent prior to the dismissal. The respondent failed to follow its own disciplinary policy. The alleged grounds for dismissal were gross incompetence and gross misconduct.
- 8.22 In his evidence to the Tribunal the claimant refutes each of the allegations made against him by Mr Andersson. The claimant stated that this was "contrived plan to remove me from the respondent organisation because I made various disclosures." The claimant points out that at the time of his dismissal the respondent had not carried out a "full data analysis and audit" at the time of his dismissal. The claimant points out that the audit report relied on by the respondent was not completed until 28 February 2017 (more than a month after his dismissal) and circulated 21 21 July 2017. The claimant further states that despite Mr Andersson claiming that civil and criminal proceedings were to be commenced against the claimant, to the claimant's knowledge, no proceedings in any jurisdiction have been issued against the claimant arising from the allegations on which his dismissal was based.
- 8.23 The claimant was not notified of his right to appeal the dismissal. However, the claimant informed the respondent of his intention to appeal the decision to dismiss him. An appeal was proposed to take place on the 11 April 2017. The claimant was not available on that

date and also took issue with the choice of Mr Landi as person to conduct the appeal: the claimant had made allegations against Mr Landi.

- 8.24 The respondent arranged for Ms June Thorpe an independent third party to carry out the appeal. The claimant was not available and in the United Kingdom on dates suggested by Ms Thorpe and she eventually conducted the appeal without the claimant's input.
- 8.25 In respect of Ms Thorpe's appeal the claimant states as follows: she was provided with selective documentation; the claimant criticises the review of his emails; the claimant's whistleblowing allegations were dismissed. However, Ms Thorpe found that the claimant had been unfairly dismissed and that he had not been provided with a written statement of terms and conditions of employment.

### **Conclusions**

9. The Tribunal is satisfied that the claimant made protected disclosures. Section 43A states that a "protected disclosure" means a qualifying disclosure (as defined by section 43B ERA) which is made by a worker in accordance with any of sections 43C to 43H ERA. A "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following: that a criminal offence has been committed, is being committed or is likely to be committed; that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; that a miscarriage of justice has occurred, is occurring or is likely to occur; that the health or safety of any individual has been, is being or is likely to be endangered; that the environment has been, is being or is likely to be damaged; or that information tending to show any matter falling within any one of the preceding has been, is being or is likely to be deliberately concealed.
10. Having taken account of the claimant's evidence we are satisfied that the claimant made qualifying disclosures. The claimant disclosed information. The information disclosed by the claimant tends to show that a criminal offence has been committed, is being committed or is likely to be committed and that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The claimant disclosed the information in the reasonable belief that it tended to show that a criminal offence has been committed, is being committed or is likely to be committed and that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The Tribunal is satisfied that he did so in the public interest.
11. The Tribunal is also satisfied that the claimant has been able to produce sufficient evidence to raise the question whether the reason for the dismissal was because of the protected disclosure.

12. We have gone on to ask ourselves whether the respondent proved its reason for the dismissal. The respondent relies on conduct as a reason for dismissal. The respondent has not attended or been represented at this hearing. The respondent has not produced any signed statements setting out the evidence in support of their case. The Tribunal has considered the contents of the ET3 setting out the respondent's case. The claimant refutes the respondent's case as set out in the ET3.
13. The Tribunal did not require the claimant to give live evidence before us, he produced a signed witness statement, he was present and willing to give sworn evidence if required. We considered the claimant's evidence as set out in the witness statement as prima facie credible and we have no basis for rejecting it on its face. The absence of the respondent means that there has been no challenge to the claimant's evidence. We accept the claimant's evidence as set out in the witness statement.
14. Having considered the evidence before us we are not satisfied that the respondent has proved that the reason for the dismissal of the claimant is conduct. The claimant's evidence leads us to conclude that there was no justification for a genuine belief that the claimant was guilty of misconduct.
15. We have gone on to consider whether we accept the reason put forward by the claimant (that he was dismissed because he made protected disclosures) or whether there was a different reason for the dismissal. We have come to the conclusion that the reason for dismissal was because the claimant made protected disclosures.
16. The evidence, even as presented by the claimant, portrays a situation where the relationship between the claimant and Mr Andersson was rapidly deteriorating. There was an increasing level of distrust between the two men. The claimant says that the source or reason for the deterioration in the relationship was the fact that the claimant made protected disclosures.
17. We accept that contention. We point to three matters which in our view show that the claimant's protected disclosures affected and infected the relationship between the claimant and Mr Andersson. The first point is the timing of the claimant's dismissal. The dismissal came after the claimant had made a series of disclosures not just to Mr Andersson but also to Mr Dillon in Canada. The second matter is the tenor of the exchanges between the claimant and Mr Andersson, culminating in an exchange of emails around December 2016 and January 2017 (p1276-1282). It is noted by the Tribunal that these emails which specifically reference the claimant's disclosures reveal the extent to which the relationship between the two men has deteriorated but also that a primary cause for that is the claimant's disclosures. The final point is the fact that at the time that the claimant was dismissed, there was no basis for making the allegations that are sought to be supported by the audit report. The audit report, circulated 21 July 2017, is dated 28 February 2017 (over a month after the claimant was dismissed). If there was no audit report at the time of the



- claimant's dismissal the content of the report cannot be a reason for dismissal, in the circumstances we consider it likely that the real reason for the claimant's dismissal was because of the protected disclosures.
18. The claimant was therefore unfairly dismissed because he made a protected disclosure, contrary to section 103A ERA.
  19. The claimant was also unfairly dismissed contrary to section 98 ERA.
  20. The determination of the question 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 is to be determined in accordance with equity and the substantial merits of the case.
  21. In any proceedings before an employment tribunal any Code of Practice issued by ACAS<sup>1</sup> shall be admissible in evidence, and any provision of the Code which appears to the tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question. The respondent failed to follow any procedure before dismissing the claimant there was a complete failure to follow the code in respect of the action before dismissal. Following the dismissal, the respondent failed to allow the claimant the opportunity to be present at any hearing of the appeal. The procedure followed by the respondent was such as to render the dismissal unfair.
  22. The reason for the dismissal is disproved by the claimant's evidence. The respondent has not produced evidence to support the complaint or to support the conclusion that the respondent had a genuine and reasonable belief in the claimant's alleged misconduct. Even if the reason for dismissal was conduct, it has not been shown that in dismissing the claimant the respondent acted reasonably.
  23. Basic award: The claimant is entitled to a basic award of £1916. The claimant's age was 37 years at the date of termination of his employment. The claimant's gross weekly pay at the date of termination of his employment exceeded the limit set out in section 227 ERA which was £479. The claimant had four years complete years of employment.
  24. Section 38 Employment Act 2002 provides that if in proceedings for unfair dismissal the employment tribunal makes an award to the employee, and when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 (the duty to provide written statement of particulars of employment) the tribunal must increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award

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<sup>1</sup> Issued under section 199 Trade Union and Labour Relations (Consolidation) Act 1992.

by the higher amount instead. The minimum is two weeks pay the maximum amount is four weeks pay.

25. The Tribunal has concluded that it is just and equitable to make an award of the minimum amount. In arriving at this figure, we take into account that the claimant was a senior employee and a director of the respondent, however, he was not responsible for HR documents. We also take into account that the respondent was aware of its responsibility to provide written statement of particulars of employment to employees and did so in respect of other employees but not the claimant. In the circumstances we consider that an award of the lower amount is just and equitable.
26. The Tribunal considers that the claimant should also receive compensation for loss of statutory rights and makes an award to the claimant in the sum of £500.

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Employment Judge Gumbiti-Zimuto  
Date: 11 February 2019  
Sent to the parties on: 15 February 2019

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For the Tribunals Office