



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Taylor  
**Respondent:** Tec Reports Ltd  
**Heard at:** Nottingham  
**On:** 2, 3 and 4 January 2019  
**Before:** Employment Judge Blackwell (sitting alone)

## Representation

**Claimant:** In person  
**Respondent:** Mr M Islam-Choudhury of Counsel

**JUDGMENT** having been sent to the parties on 26 January 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. Mr Taylor represented and gave evidence on his own behalf. Mr Islam-Choudhury represented the Respondent and he called Mrs E Davis, their Operations Manager and Mr C Griffin, their Chairman and Chief Executive Officer. There was an agreed bundle of documents and references are to page numbers in that bundle.
2. The issues were identified as follows.
  - 2.1 Firstly, did Mr Taylor make a protected disclosure or disclosures within the meaning of section 43A and B of the Employment Rights Act 1996. If so, was Mr Taylor dismissed pursuant to section 103A of the same Act, which reads:

***“103A Protected disclosure.***

*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”*

2.2 Or, as the Respondent contends, was Mr Taylor dismissed for a potentially fair reason within the meaning of section 98(1) and (2) of the 1996 Act.

2.3 If so, was that dismissal fair having regard to the provisions of subsection (4) of section 98.

### **Findings of fact**

3. Mr Taylor was first employed as General Manager of the Respondent (Tec Reports) on 5 May 2014. He left for a short period from 5 June 2015 to 24 August 2015. Therefore, his period of continuous employment begins on 24 August 2015 and ends on 31 March 2018, which was his effective date of termination.
4. Tec Reports are a Company who provides services to the vehicle insurance sector supplying engineering reports and assessments, together with the management of motor vehicle claims.
5. Mr Griffin was co-founder of Tec Reports and I accept that he was the main author of their growth and success.
6. Mr Griffin stepped down from day to day management on the appointment of Mr Taylor in 2014 and, regrettably, Mr Griffin suffered family illnesses and bereavements in 2016 which led to him spending even less time in the business.
7. In February 2017, trading conditions were challenging and Tec Reports lost a major customer with a loss of income of some £400,000 per annum, which translated to an operating profit of some £40,000.
8. Profits declined from £148,000 in 2016 to £93,000 in 2017. Mr Griffin states, and I accept, that from July 2017 the Company was loss making. Mr Taylor disputes that the Company was failing but accepted that it could have been loss making in the latter half of 2017.
9. In September 2017, Mr Griffin and Mr Taylor discussed the terms of Mr Taylor's employment and they agreed the addition of commission based on the sale of IT products.
10. On his partial return to the business, Mr Griffin decided that a strategy rethink was needed and he held a strategy meeting on 20 November 2017. What appear to be the verbatim minutes are at pages 100 to 116.
11. The then current organisation chart is at page 94 and Mr Griffin's proposed organisational chart is at page 96. The proposed changes appear to mean a diminution in role of General Manager. In both cases,

Mr Griffin remains as Chairman and Chief Executive Officer and his wife as General Operations Director.

12. At about that time, Mr Griffin decided that he needed to return to full-time work and to retake the helm. He discussed with his wife a number of cost saving measures, including redundancies at senior level. He identified the roles of General Manager and Office/Operations Manager, ie Mrs Davis's role.
13. The potential was for Mr Griffin to take over much of the General Manager's role with his wife taking over much of the role of Mrs Davis, which also would have required Mrs Griffin to return on a full-time basis.
14. On 5 December, Mr Taylor's evidence is that between that date and 7 December he had four telephone conversations with Mr Griffin. He says that they discussed a complaint from the IAEA (the regulatory trade body) that an unnamed engineer had overstated his qualifications in signing off official reports. In cross-examination, Mr Taylor said he had done a random audit and had found that a number of engineers had been overstating their qualifications.
15. Mr Griffin informed Mr Taylor that he had been sent the minutes of the IAEA committee meeting by a committee member and those minutes identified the unnamed engineer, who turned out to be Mr Griffin's son who was an employee of the Company.
16. Mr Taylor asked Mr Griffin to email those minutes to him, which Mr Griffin did. I accept Mr Taylor's evidence that he had a reasonable belief that the sending of confidential minutes containing personal data (see page 125) by a committee member of the IAEA was a data protection breach. He said, and I also accept, that he knew that the committee member was not the data controller.
17. Mr Taylor also says that he believed that not only was the committee member in breach, but that Mr Griffin himself was in breach by forwarding the minutes to Mr Taylor.
18. Mr Griffin accepts that there were discussions by telephone but his evidence is to the effect that they concentrated on the business and improving the financial position thereof. He does recall, however, that he instructed both Mr Taylor and Mrs Davis to ensure that all engineers' qualifications were correctly stated.
19. I also accept that Mr Taylor told Mr Griffin that the data breach needed to be rectified by contacting the IAEA.
20. I think that the difference in the evidence reflects the difference in view that the two parties took of the IAEA disclosure. Mr Turner, in my view

rightly, saw it as a serious data breach which required correction and he did not trust Mr Griffin so to do. On the other hand, Mr Griffin saw it as a threat to the reputation of the business, which needed rapid correction.

21. On 14 December, Mr Griffin had another strategy meeting with his wife and Mr Davis was also present. He states and Mrs Davis confirms that Mr Griffin was considering making the general manager role redundant in the light of his return to full-time working. They also considered the return full-time of Mr Griffin, which would have had the consequence of the office operations manager role (ie that of Mrs Davis) also being redundant. However, Mr Griffin decided not to return and therefore that proposal was not pursued.

22. On 15 December, Mr Taylor was summoned to a meeting with Mr Griffin with Mrs Davis as a notetaker. Mr Taylor says that Mr Griffin said to him:

*“I am just going to say it as it is. I can’t work with you anymore. I am making the position of general manager redundant. Making you redundant. You are on gardening leave. We will pay you what we owe you and I will be in touch.”*

23. Both Mr Griffin and Mrs Davis gave evidence that the minutes taken by Mrs Davis at page 128 correctly reflect the discussion. The relevant part reads:

*“Mr Griffin – I have invited you to a meeting with myself to discuss the possibility of your role as General Manager being made redundant. Whilst the Director and CEO look into this and investigate the effects to the business, due to the level of authority in your status as the General Manager, I will be placing you on garden leave with full pay and then will be inviting you to a meeting with myself to go over and discuss my final decision.”*

24. In fact, Mr Griffin did not have the courtesy either to speak to Mr Taylor face to face or by telephone. I also note that at page 128A is a redacted email, though it has been confirmed by Mr Griffin that it was sent by Mr Hiorns (the then Engineering Manager) to the IAEA stating that: *“Please note that Mike Taylor is no longer with us at Tec Reports.”* Given Mr Hiorns senior position, it is reasonable to conclude that senior management had been told that Mr Taylor had been dismissed by that date.

25. Mrs Davis said in re-examination that the decision to dismiss had been taken on 19 December. On balance, I prefer the evidence of Mr Taylor. I found Mr Taylor to be a straightforward witness.

26. Therefore, I accept that Mr Griffin did say on 15 December *“I can’t work with you any more”* and that in effect Mr Griffin made up his mind to

dismiss by 19 December at the latest. I accept that Mrs Davis sent the letter at page 128 to the wrong address. She also accepted that she took no action to contact Mr Taylor until his communication to her on 16 January at page 169. He also on that date made a Subject Access Request.

27. It follows from these findings of fact that Mrs Davis's attempts to follow a redundancy process, well intentioned as they may be, could have no effect given that Mr Griffin had decided to dismiss Mr Taylor no later than 19 December.

### **Conclusions**

28. Mr Taylor has made a number of in my view justified complaints about Tec Report approach to both his Subject Access Request and to disclosure in these proceedings. I agree with him that the deletion of his personal records gives rise to suspicion. Mr Griffin's evidence as to the chronology is simply contradictory.
29. However, I do not think that it has actually hampered Mr Taylor's case. The only part on which he has failed is that he has failed to convince me that the reasons, or the principal reason if more than more, for his dismissal were the protected disclosures and I do not think that any document that had existed at any time would have helped him.
30. First then, did Mr Taylor make a protected disclosure having regard to the provisions of sections 43A and 43B and in particular subsection (1)(b)? I have found as a fact that Mr Taylor did tell Mr Griffin that the sending of the minutes in unredacted form by the committee member was the data protection breach and it is not in dispute that that was a disclosure of information. I accept that the sending of the minutes tends to show that the committee member had failed to comply with a legal obligation, ie not to disclose personal data.
31. As to reasonable belief, Mr Islam-Choudhury submitted that Mr Taylor could not have had a reasonable belief because he did not know that the committee member was not authorised to disclose the minutes. However, Mr Taylor (and I accept) that he knew that the committee member was not the relevant data controller and therefore could not have been authorised.
32. As to the question of public interest, I am satisfied that Mr Taylor intended that the IAEA's attention should be drawn to the data protection breach so that it should not be repeated. He did this himself on 16 January (see 136).
33. As to the second disclosure, ie that from Mr Griffin to Mr Taylor of those minutes, I am not satisfied that that was a protected disclosure because it was induced by Mr Taylor, albeit for the best motives.

34. The third disclosure relied upon by Mr Taylor in his further and better particulars, namely that of 16 January directly to IAEA can have no bearing on the issues before me because it occurred after I had found the decision to dismiss had taken place.
35. What then was the reason for the dismissal or, if more than one, the principal reason? Both sections 103A and 98 begin with those introductory words. It is always for the employer to prove a potentially fair reason and in this case, Tec Reports rely on redundancy, which is a potentially fair reason.
36. Mr Taylor submits that the timetable, ie the discussions of 5 December and his peremptory dismissal on 15 December is sufficient. He says in his proof of evidence that in the absence of a definitive justification by the Respondent for the termination for the his employment, the actual reason for the employment detriment is simply the fact that the Claimant did his job and challenged the CEO when wrong doing by the CEO was presented to the Claimant.
37. The Claimant is guilty of having a moral compass and acting accordingly, refusing to turn a blind eye when presented with his employer's improprieties and for that action, the Claimant has been penalised unfairly. The Claimant has utilised the whistleblowing option to correct a wrongdoing and employment has been terminated as a result.
38. Mr Islam-Choudhury draws attention to the fact that not once in the extensive correspondence between the parties following the 15 December or in the two meetings that Mr Taylor with Mrs Davis, did he mention whistleblowing as a reason for dismissal. Mr Taylor repeatedly responded that it was pointless so to do. I do, however, find it surprising that there was never a mention, particularly as Mr Taylor had the benefit of the advice of an HR specialist in the latter stages.
39. Turning now to the reasons advanced by the Respondent, in summary the Respondent says that the case for redundancy is as follows.
40. Firstly, Mr Griffin had decided to return to work full-time and would therefore be able to take on much of the role of General Manager. Secondly, that Tec Reports had, since July 2017, been losing money. Thirdly, that costs could be saved by operating without an employee as general manager. I accept that these points are supported by the facts.
41. Mr Taylor draws my attention to paragraph 24 of Mr Griffin's proof of evidence in which he gave a number of problems which he had found on his return to the business. I accept that those were not the direct responsibility of Mr Taylor but, having said that, they do not detract from the three reasons advanced by the Respondent above.

42. It is also clear from Mr Griffin's evidence that he had lost confidence in Mr Taylor. In my view, that is what led him to make the remark "*I can't work her with any more*". He says at para 26 of his evidence that discussions with Mr Taylor became rather obstructive and frustrating. He also said in cross-examination that he felt that Mr Taylor was not on board with his November strategy proposals.
43. On balance, I accept that Tec Reports have shown that the principal reason for dismissal was redundancy. Mr Griffin also had in mind his loss of confidence in Mr Taylor. If the protected disclosure issue was in Mr Griffin's mind at all, it seems to me that it could only have been a minor irritation for the reasons I have given.
44. Was then the dismissal fair having regard to subsection (4) of section 98? Patently, it was not. The redundancy process was a sham because the decision to dismiss had clearly been taken not later than 19 December.
45. That leads me then to the **Polkey** issue. What were the prospects expressed in percentage terms that Mr Taylor would have been dismissed had a fair procedure been followed? Such a procedure would have required proper consultation, in other words listening to the employee whilst keeping an open mind and examining any reasonable alternatives. Also, whether suitable alternative employment could be found. In this case, it is common ground that no such suitable employment, having regard to Mr Taylor's seniority, was available. It would also have required a meaningful appeal, that is either by Mr Griffin hearing the appeal, some other person having taken the decision to dismiss or if Mr Griffin took the decision to dismiss, the appointment of an independent appeal officer with genuine powers to overturn the decision to dismiss.
46. I am satisfied that had such a procedure been followed, a dismissal would inevitably have followed.
47. Further, Mr Taylor in evidence said that if a proper procedure had started or if Mr Griffin had approached man to man, he would have resigned because he did not wish to stay where he was not wanted. He also indicated that he had intended to leave in September 2017 but had stayed on because he felt that he was needed.
48. Thus, in either event, in my view Mr Taylor's employment would have been fairly ended not later than 31 March 2018.

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Employment Judge Blackwell

Date 15 Feb 2019

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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