EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr R Attoe	**v**	KJL Solicitors Limited

Heard at: Norwich **On:** 1, 2, 3 and 4 April 2019
In Chambers: 10 and 11 April 2019

Before: Employment Judge Postle

Members: Ms J Schiebler and Mrs S Blunden

Appearances
For the Claimant: Ms Bewley, Counsel
For the Respondent: Mr Williams, Counsel

RESERVED JUDGMENT

1. The Claimant was not dismissed for making protected disclosures under the Employment Rights Act 1996 and did not suffer detriments for making a protected disclosure.

2. The Claimant suffered unlawful deduction of wages in the sum of £550.00.

3. The claim under the Working Time Regulations 1998 is not well founded.

4. The Claimant is entitled to be paid unpaid expenses of £120.00.

5. The Respondents are in breach of contract and Ordered to pay damages of 1 month's notice pay.

RESERVED REASONS

1. The claimant brings claims to the Tribunal for automatic unfair dismissal and detriments under the Employment Rights Act 1996 (whistle blowing), unpaid wages, failure to pay minimum wage, breach of contract, refusal to permit rest breaks and unpaid balance of his training allowance and a claim for holiday pay. The specific issues were set out in the Case Management Hearing on 2 November 2018 (page 2). This was followed

by an application by the claimant to amend the claim to recite the detriments which was granted by Employment Judge Postle on 16 December 2018.

2. Originally the claimant had made a claim under the Equality Act 2010 for the protected characteristic of sexual orientation, this was withdrawn by the claimant's advisers at the Case Management Hearing and Judgment was issued dismissing that claim on 29 November 2018.

3. The Tribunal heard evidence through a prepared witness statement from the claimant who called no further evidence.

4. For the respondents, the Principal of KJL Solicitors, Ms Kerry Joan-Law, again giving evidence through a prepared witness statement. There was a witness statement on behalf of the respondents from Mrs E Lawson, a Solicitor formally employed by the respondents who was unable to attend the Tribunal being the full time carer of her child.

5. The Tribunal had two bundles of documents consisting of 818 pages plus a supplemental bundle from the claimant of 90 pages.

6. The Tribunal were also provided with a copy of the Solicitor's Regulatory Authority Authorised Training Provider information pack.

7. It was not to be overlooked out of the morass of documents contained in the bundle, the Tribunal as a conservative estimate were only referred to approximately 50 pages. The Tribunal also noted the bundles contained much duplication. Given the above, the Tribunal were concerned that little or no thought had been given to the preparation of the contents of the bundle with regard to the relevance of the documents included.

8. On the first day of the hearing, after the Tribunal had spent the morning reading the parties' lengthy witness statements, the respondent's Counsel indicated he was unsure as to the qualifying disclosures being advanced by the claimant. Clearly, if the respondent was unclear as to the protected disclosures being advanced either at the Case Management Hearing or thereafter, it would appear in the four months leading up to this hearing the respondents have had every opportunity to address the issue by way of a request for further and better particulars and have simply failed to do so.

9. It was also the case that neither Counsel appeared to have noticed that page 2 from the Case Management Hearing Summary was missing from the bundle. That page set out the qualifying disclosures. Further discussion ensued between the parties leading to the Tribunal warning if the matter did not proceed soon, the hearing would have to be vacated with potential costs implication. The respondent's Counsel was still arguing that he was unclear as to qualifying disclosures even after the contents of page 2 of the Case Management Summary and the issues to be determined were pointed out. However, Counsel still appeared reluctant to continue.

10. The Tribunal, in order to move the matter forward, having regard to the overriding objectives and proportionality and to avoid a costly postponement, made an Order that the claimant provide further detail of the protected disclosure (if in fact that was needed) and that was to be provided in the afternoon session. At 3.50 pm the Tribunal were informed and indeed provided with an agreed list of issues in relation to the whistle blowing claim which largely reinforced the issues previously determined. The issues centred on alleged qualifying disclosures in March and September 2017.

The Facts

11. The respondent is a Solicitors practice, the sole Director and Senior Partner is Ms Kerry Joan-Law who has some 15 years post qualification experience. The practice is a small provincial business located in Blofield which is a small village in Norfolk. Before the claimant joined, there was one qualified solicitor Mrs E Lawson, and an administrative staff member.

12. In or about July / August 2016 the claimant responded to an advert via a recruitment agency specialising in legal recruitment for the position of trainee solicitor. The claimant attended an interview with Ms Kerry Joan-Law at which it would have been obvious that the respondents covered a relatively limited area of law within the practice. Furthermore, Ms Kerry Joan-Law advised the claimant at the interview that the practice had a conveyancing bias and that he would not have three distinct seats in a small firm as suggested by the Solicitor's Regulatory Authority's Training Guidance as best practice. The majority of the respondent's work, unsurprising for a provincial practice, was in fact residential and commercial conveyancing, family law and with a small volume of litigation work.

13. The claimant was a mature candidate in his forties who had previously undertaken paralegal work at another firm in Norfolk between April 2014 and March 2015. Previous to that, the claimant had a career in journalism.

14. The claimant was ultimately engaged by the respondents as a trainee solicitor, commencing his employment on 1 March 2017 following some protracted negotiation over his contract and start date. The claimant's contract appears at pages 106 – 118 which is for a fixed period of two years to cover the training prior to being admitted as a solicitor. There are among the bundle a number of contracts for the claimant though only one appears to be signed by the claimant and that is the one at pages 106 – 118. The salary provided was £15,000 (7.1), hours of work 9 am to 5 pm Monday to Friday, normal working hours of 40 hours per week (13.1). On top of his salary the claimant was provided with a training budget of £3,000 in the first year which, if unused, the balance would be paid to the claimant as a top up to his salary (11.5).

15. Trainee solicitors are regulated by the Solicitor's Regulatory Authority (SRA) Training Regulations 2014 qualification and provider regulations, which set out guidance to those providing training in placements and to the trainee as to what is required throughout the two year period. The provider of the training must be recognised and authorised and that authorisation may be revoked at any time.

16. Regulation 12 - Requirements of Recognised Training:

Regulation 12.1

An authorised training provider must provide a trainee with training which:

a. is supervised by solicitors and other individuals who have the necessary skills and experience to provide effective supervisions to ensure the trainee has relevant learning and development opportunities and personal support to enable the trainee to meet the Practice Skills Standards;

b. provides practical experience in at least three distinct areas in English and Welsh law and practice;

c. provides appropriate training to ensure the trainee knows the requirements of the principals and is able to comply with them; and

d. includes regular reviews and appraisal of the trainee's performance and development in respect of the Practice Skills Standards and the principals and the trainee's record of training.

Regulation 12.2

If an authorised training provider is not able to provide training in all areas of the Practice Skills Standards or in at least three distinct areas of English and Welsh law practice, the Requirements and Regulations 12.1(a) and 12.1(b) may be satisfied by a secondment of the trainee.

17. Regulation 13 – Training Principal:

Regulation 13.1

A Training Principal must:

a. hold a practicing certificate or be a practicing Barrister;

b. be competent to meet the requirements of these regulations;

c. ensure that the training provided meets the requirements of Regulation 12;

d. ensure that the trainee maintains a record of training which will meet the requirements of Regulation 14; and

e. ensure that any person involved in the training and supervision of a trainee has adequate legal knowledge and experience in the practice area they are supervising and the skills to provide effective supervision.

18. Regulation 14 – Record of Training:

Regulation 14.1

The trainee must maintain a record of training which:

a. contains details of the work performed;

b. records how the trainee has acquired, applied and developed their skills by reference to the Practice Skills Standards and the Principals;

c. records the trainee's reflections on his / her performance and development plans; and

d. is verified by the individuals supervising the trainee.

19. Regulation 15 – Monitoring of Recognised Trainee

Regulation 15.1

We may monitor the training provided by an authorised training provider. Monitoring may include a visit to the authorised training provider. The training must cover a minimum of three heads of law in the two year period or the trainee works in various areas of law on a day to day basis in line with the type of work available.

20. The second relevant regulations from the SRA is a guide to authorised training provider (an information pack), which sets out the key requirements, for example: pay, training in principal, confirmation that the trainee can report the provider if they breach the requirements, or fail to provide adequate training, how training contracts may be cancelled, possible secondment, responsibility of trainees ensuring they maintain an adequate record of their training. Failure to comply, there is a sanction of revoking the status as an authorised provider and the trainee not having the competence to be admitted.

21. It would appear the claimant was given a gentle introduction to how the office was run and an introduction to the conveyancing department. Mrs Lawson encouraged the claimant to find his way round the computer systems and gave the claimant some live conveyancing files to observe.

22. It would appear the claimant was keen to fit in, answering incoming calls, Miss Joan-Law explained the process of client care, what was needed in those letters and the claimant appears to have sat in client meetings and dealt with estate agents enquiries.

23. The claimant having commenced his employment, it was clear within a very short period of time (by March), tensions had arisen between the claimant and Mrs Lawson the qualified solicitor. It would appear, from a text message by Mrs Lawson of 27 March, she was,

"having trouble with training him [the claimant] as when I do try and explain anything he seems very reluctant to listen to me and sometimes seems to get frustrated if I pick up something that I am not happy with".

Mrs Lawson felt he had some difficulty taking instructions from someone younger than him and was concerned over his attitude and the way he spoke to her.

24. It is around this time, particularly on 20 March 2017, that the claimant first raised the subject of the quality of his training (less than a month into his training), at pages 167 – 170. The claimant's own evidence is that he is advised and believes this email was a protected disclosure though he did not appreciate it at the time. The claimant accepts he was raising in a fairly gentle and low key way some concerns he had over his training. Ms Joan-Law responded to each and every one of his points (pages 167 – 170) where we see the exchange of views. It is clear from her response that she is concerned that the claimant appeared to take her instruction as either a criticism of the fact that she should see and wanted to check everything that the claimant sent out. The claimant was concerned that his instructions from Mrs Lawson were not always clear, by way of post-it notes on files from her where the writing was unclear. Ms Joan-Law made it clear, if instructions to him were uncertain he should simply ask. The office was a small office and largely open plan.

25. The suggestion that the claimant was given files from historically challenging clients, Ms Joan-Law advised the claimant if a client or an estate agent was being difficult and he was unable to deal with it he should simply pass the file to her. There were issues discussed about compliance and the need to ensure that emails etc. before they were sent out by the claimant were reviewed and checked by either Ms Joan-Law or Mrs Lawson.

26. There is a clear emphasis by Ms Joan-Law that if any client, historical or otherwise, appears to be being difficult and the claimant is unhappy or unsure how to deal with it, he should simply pass it over to her.

27. As for suggesting that the claimant was not given the support or supervised and had to sort matters out himself, it was explained to the claimant the importance of the trainee working their way through issues

and looking matters up for themselves, even in areas of law outside their scope of knowledge. It was emphasised to the claimant that he was only 20 days into his training and if he wanted a more structured process in the conveyancing department it had been previously suggested that he were given a small case load where he would work through the process from start to finish.

28. In relation to searches (conveyancing), Ms Joan-Law makes it clear that training will be given on searches and it might even be worth talking to a search provider to see if some on sight training can be given.

29. What seems to have prompted the claimant's undated email where he alleges the qualifying disclosure (page 171) is an email from Ms Joan-Law (page 173) to the claimant which reads,

"Dear Richard

On your file of [blank] I take it the client has not signed the agreement which I found in the pocket of the file signed by [blank]? Or did he sign the agreement and then instruct you? I am asking because you haven't advised on it thus far.

Richard, I know this is terribly tedious and it's not because we think you are incapable of writing a letter, but all communications going out of this office from you, must be overseen by myself or Elizabeth before it is sent. If Elizabeth or I are unable to supervise you then we are in all sorts of breaches of both SRA rules as well as my professional indemnity cover. So, these become quite serious risk of compliance matters.

Are you aware of the difference between residential and commercial searches? Has anyone given you any training yet on obtaining searches?

Yours sincerely
Kerry Joan-Law"

30. If one looks at the email exchange responding to the claimant's alleged qualifying disclosure, it is simply concerns about the way the claimant is handling matters thus far with less than 20 days into his training.

31. To repeat, these were matters relating to the way the claimant was conducting conveyancing files. Ms Joan-Law had simply reviewed a file in which the claimant had obtained the client in which she found a number of concerns which needed clarification from the claimant. Particularly errors in client care and lack of advice that needed to be addressed. Furthermore, there were particular concerns over an email exchange between the claimant and his new client friend that had not been checked by her. There was other correspondence sent out by the claimant that had not been checked by Ms Kerry Joan-Law or Mrs Lawson. The claimant seemed to think that within a matter of days into his training that he should be dealing with conveyancing files from start to finish. Ms Joan-Law

sought assurances from the claimant that no work would be sent out without either hers, or Mrs Lawson's approving. An informal discussion took place with the claimant around 22 March confirming her instruction and whether anything further needed to be discussed regarding the email exchange. It was at this point that the claimant apologised and advised he was stressed on the day and was embarrassed about the whole thing.

32. By 28 April the claimant was clearly unable to accept he was a trainee and whose work must be supervised, particularly by Mrs Lawson and emailed Ms Joan-Law (page 178),

"Dear Kerry

Are we able to step back from the rigidity of having <u>every</u> email I send being checked?

It is seriously impeding any degree of efficiency and I, personally, can see no purpose for it.

In two months I have had one email amended (the addition of the word 'the').

I think a decent way forward is that I get reviewed what I say are 'matters of substance' such as issues that really affect the case I am dealing with.

Emails to clients / estate agents with updates, I am sure I have the skill to communicate effectively without my words audited?

Can you clarify please?

Yours sincerely
Richard Attoe Trainee Solicitor

33. On 2 May Ms Joan-Law responds (page 176),

"Dear Richard

Regarding emails, I am prepared to release some of the rigidness providing we are clear about what emails I will accept you sending with no overlook. These are as follows:

Emails to estate agents, clients, solicitors on the other side where you are relying on the last correspondence on the file, i.e. simple updates that you will rely on by a usual telephone update. For the avoidance of doubt, "Mr and Mrs would like an exchange by the 15th and completion by the 31st if possible…", or we are waiting for signed documents to come back / funds on account to come in. Forwarding emails received in that require the client to answer enquiries raised by the other side can be sent providing you do <u>not</u> need to advise or assist the client by advising what is meant by

a particular enquiry being raised as this would fall back into the "get it checked first category".

Emails that continue to need approval are:

1. *any emails that contain property reports;*
2. *emails to clients in respect of enquiries we have raised and have now received replies back to, where you would need to outline or advise on something within the replies received;*
3. *emails where you need to explain to a client about an enquiry that is being raised by the other side, as this requires a certain level of advice if an explanation is required;*
4. *emails containing bills or completion statements unless the bill or completion statement has received prior approval from either Liz or myself;*
5. *I still want to see client care letters before they are sent out, but if they continue not to require any tampering by myself or Liz by the end of the month I will be happy for these to be sent out without further approval for sale and purchase or sale and purchase only as long as the fees quoted have been cross checked with Kerry or Liz until you are happy you know the fees quotes off pat (transfer of part, transfers etc. will still need to be approved by Liz or I before fees can be quoted).*

Hope that assists for the time being.

Richard, if there are things that you are giving to Liz or myself that you feel are not being returned in a timely manner then please write the client matter number down, when this was given to you to do, when it was returned back to you (amendment / sending). If there are delays emerging it might assist me managing fee onus and work load moving forward. In particular I need to keep an eye on when Liz is not in the office on Wednesdays and Thursdays, we need to circumvent work back log happening by managing better what she has for Monday and Tuesday in so far as checking your work.

Finally, you intimated this morning that nothing has happened on your Ebanks file for three weeks, but we only received the CPSE enquiries / contracts etc. on 25 April, we have a bank holiday in between, I do not consider this file to have been delayed. Maybe what you meant was (I am only summising) there will be a delay as you will not be able to deal with responding to your client in a timely fashion? If this is an issue just let me know and I can write to your client setting out my observations this afternoon. But you need to let me know now as I am hoping to drop off my books to the accountants in Norwich by close of play today.

Sorry for the long response but I am just trying to be helpful providing examples.

Yours sincerely

Kerry Joan-Law"

34. On 16 May 2017 a text message from Mrs Lawson to Ms Joan-Law was suggesting a training meeting with the claimant later in the week as she was concerned the claimant appeared to be taking on too much work, he was getting stressed and appeared to be frustrated when Mrs Lawson asked him to deal with her matters. He pointed out she had not given him any work for ages. She was concerned that one of the files she had given him to deal with some drafting, would not review the file / draft with her and he simply does not ask for help and would not discuss matters with her. It would appear following this text message a meeting did take place in May between the three parties and it was agreed that the claimant's current conveyancing work load would be reduced and his exposure to litigation increased.

35. There seems to have been a further review meeting, either in July or August, the date is unclear as there are no specific minutes, at which the claimant informed Ms Joan-Law that he had had enough of conveyancing and it was therefore agreed he would hand over / or run down his conveyancing work load and continue training in commercial property and litigation. The claimant was also to have some exposure to divorce cases. This seems to be borne out by pages 193 and 194, conveyancing handover notes which clearly relate to matters in August.

36. It is clear that the relationship between Mrs Lawson and the claimant had deteriorated to the extent that the claimant simply would not listen or accept supervision by Mrs Lawson. In turn Mrs Lawson advised during July 2017 that she simply was no longer prepared to train the claimant as when she tried to engage him in joint meetings or for file reviews, the claimant would assert he was always too busy.

37. It would appear that once the claimant was supervised by Ms Joan-Law, his relationship with Mrs Lawson appeared to be more relaxed. Whereas the claimant's relationship with Ms Joan-Law became tense. It seems to be the case that the claimant cannot accept constructive feedback or supervision. It would appear any suggestion of a training issue with the claimant would make him defensive.

38. As the claimant was now in a contentious seat it was important files were kept orderly and a clear record of time costing.

39. On 11 September Ms Joan-Law emailed the claimant suggesting a review meeting for that week. Ms Joan-Law also indicated in that email she had now set up the claimant's own file for time recording daily and explained how this was to be effected.

40. The review meeting takes place on 19 September. The claimant had prepared his own notes following that meeting, although they were only seen by Ms Joan-Law during the course of disclosure for these proceedings. This meeting, the claimant asserts, is his second qualifying

disclosure. Particularly that he believed he still had a substantial workload in conveyancing and that his training was inadequate and inconsistent. It would appear that this allegation is in response to Ms Joan-Law's concerns about the claimant not adequately breaking down his time recording. In particular that it was an integral part of the claimant's training, breaking down work on a file in order to prepare a costs bill. This was not some form of overseeing or checking what the claimant was doing on a day to day basis, but an important part of the claimant's training which the claimant did not seem to take on board. To the effect that the claimant, by email of 18 September to Ms Joan-Law, questioned the relevance and the need to undertake such time recording (page 197). It is also clear that in September the claimant was being asked to undertake family law, in particular to prepare an application for joint custody and an application for ancillary relief. It is during the months of September, October and November whatever the claimant believes it is clear he was being given work in the preparation of statements, bundles, instructing Counsel, preparing directions and in negotiations to settle cases prior to the issue of proceeding. However, the claimant was still not observing the instructions from Ms Joan-Law on time recording which is evidenced by the email to him of 24 October (page 230). That is met by the claimant's response on 24 October (page 232), with what can best be described as a rude and aggressive response to one's Principal merely enquiring about a training issue which had been ongoing for a couple of months with regard to time recording.

41. On 22 November, there was an issue with the claimant regarding an incorrect bill which apparently descended into a row in the office between the claimant and Ms Joan-Law. The issue arose as a result of the claimant advising Ms Joan-Law that he had told a client the amount owed and taken payment which in effect did not match the bill which the claimant had been asked to send to the client. The amount charged was in fact less than should have been billed. When the claimant was questioned about this he became somewhat aggressive and confrontational. By this stage of the claimant's training, given the problems over supervision, instruction and his attitude when matters were brought to his attention where he might be falling down. Ms Joan-Law was also concerned how he was defensive with training feedback and was concerned that his conduct was becoming untrainable. Ms Joan-Law records a note dealing with the incident over the incorrect bill referred to above and the fact that two senior fee earners now feel it is reaching the point where neither is willing to train the claimant.

42. Ms Joan-Law then goes on holiday having contacted her clients that she was going on holiday and informing them nothing would be progressed until her return, leaving instructions with the claimant of live matters that required attention that could be dealt with and in the interim period and to assist the conveyancing department as and when required.

43. The claimant had access to the keys to the office, there were other staff available in the office to answer the phone and should it have been

necessary for the claimant to ensure he took a lunch break he simply could have locked the office and taken his lunch break, there were other people available again should it be necessary to answer the phone. In this period Mrs Lawson was available, granted on a part time basis and there was a locum taken on to support the office.

44. On 18 December Mrs Lawson's daughter had been admitted to Addenbrooke's hospital for an operation to remove a brain tumour which led to Mrs Lawson leaving the practice given the circumstances. Ms Kerry Joan-Law was unable to obtain a locum or alternative cover for Mrs Lawson given the short notice in the circumstances of her leaving. On 22 December there was a joint Christmas party between the respondents and another firm of Solicitors, Madison and Morgan, at which the Principal Wendy Madison-Ward discussed with Kerry Joan-Law that a member of her staff was leaving. Ms Joan-Law, at the same time confirmed that Mrs Lawson had left the practice and that there was no immediate back up and that Ms Joan-Law would have to take over all of the conveyancing work and her own until a replacement was found. That in turn, Ms Joan-Law believed, would have ongoing issues with the claimant's training. Wendy Madison-Ward suggested that she might take the claimant to cover the gap and save advertising costs if the claimant was up for a secondment. It appears that was where the matter was left for the time being.

45. On 29 December, Ms Joan-Law secured the services of a part time locum, a legal executive with a background in conveyancing and litigation.

46. On 3 January, Wendy Madison-Ward emailed the claimant,

"Dear Richard

Thank you for your visitation, it was good to touch base and to give you a chance to see the office in the cold light of day, the faulty door being rather a warts and all introduction.

Kerry and I are due to breakfast imminently so hopefully we can agree a best way forward, where there is a will there is a way.

February works for us subject to the training extension being returned in time which I don't envisage will be a problem at all.

Let me know what days suit you and Kerry best, either Thursday and Friday or Friday and Monday.

Best wishes
Wendy Madison-Ward"

47. Then on 4 January, the claimant emailed Ms Joan-Law,

"Kerry

I understand you may have conversations with Wendy regarding a secondment over Madison and Morgan so that I can obtain a clear contentious head as part of the training contract.

Wendy also invited me directly an offer which I would like to accept.

Wendy and I have spoken briefly this week to clarify matters and she suggested I spend two initial days in M & M later this month. I suggested it would be doable on days when Emma is in so that the practice here is covered, so suggest Thursday and Friday next week (11th and 12th) or the following week (18th and 19th).

I gather Wendy and you need to meet to discuss things and confirm but understand the date of February 1st has been proposed.

Could we have a conversation this afternoon to check this is all ok and to check whether there is anything else I need to organise.

Thanks
Richard Attoe"

48. A meeting takes place between the claimant and Ms Joan-Law on 8 January and notes of that meeting are at pages 341 – 342. At this meeting it was relayed to the claimant what had been discussed and agreed with Wendy Madison-Ward. It is clear, the claimant is told that it is not going to be a secondment but that he is going to finish off his training contract with that firm and is going to start on 1 February. The claimant indicated he had not agreed anything and that she had only offered him a secondment and that his contract was with the respondents. Ms Joan-Law informed the claimant she would release the claimant from his contract, he would resign from his position and finish his training contract with the respondents. It is therefore not a secondment the claimant was told.

49. The claimant wanted a job contract from Madison and Morgan before he would hand in his notice. It was made clear to the claimant at this meeting that Madison and Morgan was going to take over the rest of the claimant's training contract and take the claimant up to qualification. In effect Madison and Morgan were to employ the claimant at which the claimant seemed to confirm his agreement.

50. On 16 January, Ms Joan-Law emailed the claimant in the following terms, (368)

"Dear Richard

Further to our conversation and previous discussions, had you not procured a transfer to Madison and Morgan Solicitors to finish off your training contract, it would have been necessary for KJL Solicitors to enter into discussions with you for a redundancy situation based on economic

and technical reorganisation of the work force which is being necessitated as a result of Elizabeth Lawson's exit from the office on medical grounds of her daughter with immediate effect in late December. It was not necessary to pursue that line of communication with you in relation to redundancy as you had already asked to be released from the firm as at 1 February 2018. When asked were you looking for a six month secondment or completing your training at Madison and Morgan you confirmed to me in a conversation within the office that you would be with Wendy until the end of your training contract. I then advised you that that wasn't a secondment but would be a transfer and both of us, as a result of that conversation, discussed matters with the Law Society to ensure that it will not affect your qualifying at the end of February 2019 where it was confirmed to both of us, albeit independently, that you would still qualify as trainees transferred their training contract all the time. Wendy confirmed to me that upon satisfaction of your trial with her firm she would engage you to complete your training contract under the guise of Madison and Morgan and I trust you have now had that confirmed.

If you no longer want to take up Madison and Morgan's offer to complete your training in Acle we will need to have a meeting about this.

Your sincerely
Kerry Joan-Law"

51. The claimant responds on 17 January, (369)

"Dear Kerry

Thank you for your email of 16 January. I am pleased there is now a degree of certainty about the situation.

Whilst the time line and circumstances you suggested in your email are correct, it is evident that the intention of KJL Solicitors is to terminate my contract from 31 January.

To confirm, I have never sought to be released from my contract. As stated in emails, conversations and meeting notes and even suggested by you as far back as May 2017, I merely sought a secondment in line with the SRA rules governing this type of contract where a practice lacks the breadth of work required to fulfil the obligations to the SRA training process.

It is clearly being stated my role at KJL will end on 31 January given my tasks in the office appear to be diminishing and becoming menial, I would recommend we settle matters as soon as possible in order to prevent further time under the recognised period of training being wasted.

Therefore, I would be grateful if you would confirm the following:

1. payment in lieu of notice;

2. *the sum of redundancy payment;*
3. *residential monies for training, prior to starting the contract I was advised the annual salary was in fact £18,000 however £3,000 was to be retained to pay for training. The training electives and PSC has cost £1,556.40 therefore I look forward to receipt of £1,443.60;*
4. *payment of the expenses claimed for travel to PSC electives emailed 8.1.18;*
5. *payment for holiday entitlement accrued but not taken to 31st January 2018, other elements will need incorporating;*
6. *confirmation of all PSC and relevant training requirements, documents and proof of all attendance will be assigned to my new employer (I attend the remainder of the PSC in May 2018) and the PSC course already in place will remain so and unchanged;*
7. *all SRA timesheets / logs handed in for signing off will be signed off and returned as complete;*
8. *confirmation KJL will assist in the provision of information or documentation to evidence the time spent within this contract of employment and count towards the recognised period of training;*
9. *where required I think it is only reasonable that costs of orchestrating any settlement agreement be borne by KJL.*

Please note my onward employment is of no consequence to these matters.

I believe much of the above are basic contractual rights and obligation and look forward to your proposals in writing to close this matter and forward as soon as possible.

Kindest regards
Richard Attoe"

52. There was then a meeting between the claimant, Ms Joan-Law and the Practice Manager on 17 January, minutes are to be found at pages 376 – 383. This was to discuss some problems with the claimant's files amongst other things which needed to be checked with the claimant. It was also discussed as to whether the claimant was moving to Madison and Morgan on 1 February. The claimant's response was particularly curt,

"what I formulated on 1 February is of no interest to you whatsoever, you aren't a party to it, you aren't anything to do with it".

There was then a lengthy debate about whether or not the claimant had transferred to Madison and Morgan, at which the claimant's response was,

"No, because you were going to make me redundant anyway".

The meeting clearly became confrontational and when Ms Joan-Law asked the specific question,

"Are you not happy with your offer that you've got over there?"

The response from the claimant was,

"My offer over there is of no consequence to you whatsoever".

53. It is clear that the claimant had an offer to go over to Madison and Morgan, what he was trying to do was extract some form of payment from the respondents. Indeed, the offer from Madison and Morgan was that he would be in a better financial position from a salary point of view than that he currently received from the respondents.

54. On 25 January, the claimant receives his formal offer to transfer his training contract to Madison and Morgan (page 417), the salary is £16,940 and any pre-booked holiday were to be honoured and confirmation that the position is capable of commencement as from 1 February 2018.

55. For reasons best known to the claimant, he does not respond to the offer of employment with the commencement date of 1 February until 2 February and confirms a start date of 1 March (page 416).

56. Indeed, it appears it had been the intention of certainly Madison and Morgan and the claimant that he would commence his employment with them on 1 February as the website for the firm confirms the claimant had recently joined them from 1 February (page 805).

57. There is then a further exchange of emails on 21 January, Ms Joan-Law to the claimant, answering his email of 17 January confirming that the claimant's employment had not been terminated and the date of 31 January being the date said to have been proposed by the claimant to end his employment with the respondents and take up the new employment with Madison and Morgan.

58. That is then met with a response by the claimant on 26 January dealing with outstanding financial matters and asking for details of a redundancy payment and confirmation of payment in lieu of notice, the claimant suggesting that the notice of termination by the respondents is Wednesday 17 January.

59. Ms Joan-Law responds by letter of 26 January, perhaps not surprisingly confused as to what the exact position is regarding the claimant's transfer to Madison and Morgan and seemingly in an effort to bring the matter to an end suggests a meeting to consult over the claimant's redundancy which was proposed for 1 February.

60. A meeting does take place on 1 February at the respondent's office between the claimant and an external consultant, Mr Brown. The minutes of that meeting are at page 399 – 405. Clearly, that meeting is confrontational on both sides. At this meeting the claimant insists that he was told on 17 January that his role would be redundant from 31 January, but ultimately nothing seems to have been achieved in that meeting.

61. As a result of the impasse, the claimant is made redundant and given one month's notice effective from 1 February, (page 409).

The Law

Protected disclosures

62. S.103A of the Employment Rights Act 1996 states:-

> *"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."*

63. S.43A states:-

> *"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."*

64. S.43B(1) states:-

> *"In this Part 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—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."*

65. S.43C(1) states:-

> *"A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith—*
>
> *(a) to his employer, or*

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of the person other than his employer, or

(ii) any other matter for which the person other than his employer has legal responsibility,

to that other person."

66. S.43G states:-

"(1) A qualifying disclosure is made in accordance with this section if—

(a) the worker makes the disclosure in good faith,

(b) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) any of the conditions in subsection (2) is met, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure."

67. It is for the employer to prove the fair reason for dismissal. There is no burden on the employee either to disprove the reason put forward by the employer or to positively prove a different reason, even where the employer is asserting that the dismissal was for an inadmissible reason. However, the employee who positively asserts that there was a different and inadmissible reason for the dismissal such as making protected disclosures must produce some evidence supporting the case that there was an inadmissible reason and challenging the evidence produced by the employer. The employer can defeat a claim of an inadmissible reason for dismissal either by proving a different reason or by successfully contesting the reason put forward by the employee.

Conclusions on whistle-blowing

68. It is quite clear in this case that the claimant throughout his employment could not accept criticism or his shortcomings and whenever these were put to the claimant he became defensive. It is to be noted that his first alleged disclosure by email of 20 March 2017, in which he raises a number of issues about his perceived lack of training came within a matter of weeks of him commencing his training. The claimant accepted he was raising matters in a fairly gentle and low-key way. It is also clear that the principal Mrs Joan-Law responded to each and every one of those points. It is also clear within a matter of weeks of the claimant starting his

employment tensions arose between himself and Mrs Lawson a qualified solicitor who in a text message stated she was having trouble training him as he seemed reluctant to listen. It is therefore patently clear at the time this alleged disclosure is made, it does not satisfy the definition of a qualifying protected disclosure. Even if it was a qualifying protected disclosure, was it made in the public interest? The tribunal concludes no, it was merely made in the Claimant's interest.

69. The tribunal also conclude if we were wrong on the above conclusion the decision to terminate the claimant's contract had nothing to do with this qualifying disclosure, or subsequent disclosure, it was due to the fact that the claimant wanted to transfer his training contract and it seemed a mutual agreement by the claimant's principal, and Madison and Morgan and the claimant to do so. He would go to the new firm at a higher salary, furthermore the respondent was not in the position to continue with the training given the sudden absence of Mrs Lawson over her child's serious illness. It was also the case the respondent and indeed Mrs Lawson were concerned that the claimant had become difficult to train, almost impossible and did not take criticism of his work as a trainee well. He would be defensive and confrontational without cause or reason.

70. As to the alleged second disclosure which appears to arise in the review on 19 September at which the claimant suggested he could not continue with the heavy workload including conveyancing and that his training was very much a scatter gun approach.

71. Again, the tribunal asks itself is this really a qualifying protected disclosure capable of protection? Was it in the public interest? No, it was clearly in the claimant's personal interest.

72. The facts as above are again repeated; the claimant's dismissal had no connection or anything to do with this or the alleged disclosure in March. The tribunal repeats, there was a consensual and mutual agreement that the claimant would transfer his training contract originally it was going to be a secondment with Madison and Morgan, and then transferring over to them to complete his training contract. The claimant agreed and the difficulty arose not over the claimant's disclosure but the process in achieving the transfer and the date the transfer would occur.

73. It would appear Ms Joan-Law in utter frustration in first believing the claimant had agreed to the transfer, his stance that it was a secondment and then clearly having reached agreement with Madison and Morgan over moving to them on 1 February would simply not confirm his position to the respondent. That clearly led to utter frustration in not only the fact the claimant would not confirm his position resulting in a decision to terminate the claimant's employment on 17 January by reason of redundancy, although the real reason the tribunal concludes was some other substantial reason. Clearly that decision was not in any way related to alleged disclosures in March and September.

74. Taking all these circumstances, it is clear the alleged disclosure does not show that the respondent was failing or were likely to fail in their legal obligation. Furthermore, there is no evidence at the time of raising these issues that the claimant had in mind that he was in fact making qualifying disclosures.

75. In relation to any alleged detriment, the alleged refusal to a secondment simply lacks credibility. It had been agreed originally as a secondment but that turned into a transfer that had been agreed by all parties whatever the claimant tries to maintain. There clearly was certainly by 8 January an agreement to transfer, the claimant was only waiting to get a job contract from Madison and Morgan, clearly there can be no detriment about something the claimant was happy to agree to.

76. In relation to the claimant being put on garden leave on 17 January, given the circumstances and the exchange of emails at that time it seemed a sensible course of action given also that the real concerns the respondent had over their professional indemnity in relation to work carried out by the claimant in that period, that was entirely feasible and credible.

77. As regards the pressure to resign, clearly the respondent was frustrated by the claimant's continued refusal to say when he was leaving and the date, and given that he was asked on 17 January and refused, his answer was *"it's of no interest to the Respondent".* Again, not surprising he was released on garden leave pending resolving these matters.

78. In relation to the meeting on 1 February between the claimant and the respondent's representative, a Mr Brown, that clearly was a contentious meeting for both the respondent's representative and indeed the claimant. It was clear that the claimant did not intend in engaging in constructive conversation. It is accepted he was given three options; resignation with a compromise agreement to work out his notice as per redundancy terms. The claimant would not confirm one way or another which of the options he wished to undertake. It was as a result of this impasse that the claimant was made redundant and given one months' notice effective from 1 February by letter of that date (409).

79. The threat to withhold outstanding sums under the training budget that the claimant was entitled to was merely a negotiating tool and by any objective assessment had nothing to do with any alleged disclosures.

80. In relation to the failure to pay the claimant National Minimum Wage, a training budget clearly cannot form part of an employee's salary, there is therefore an unlawful deduction of wages in the sum of £50 per month.

81. The claim for holiday pay has not been pursued during the course of these proceedings.

82. In relation to the sums due under the training budget, it seems to be conceded that there is a sum of £71 outstanding to the claimant and it is

clear that there is an additional sum of £49 for a disclosure check which is clearly not a training expense and should not have been deducted.

83. In relation to the final claim, the claimant was denied the right to lunch breaks. It is clear that the claimant could have taken lunch breaks at any time, up until December there was certainly sufficient resources and he could have locked the door through the normal lunch time period. This claim has no merit in it whatsoever.

Credibility

84. The tribunal found Ms Kerry Joan-Law an honest credible witness who was prepared to acknowledge her own shortcomings over the claimant's employment.

85. Set that against the claimant who under cross examination was evasive, who had to be frequently warned to answer a simple and straightforward question put to him. He was disingenuous, particularly in the events leading up to the transfer of his training contract. He was clearly an obstructive and confrontational individual who appeared to have his own agenda in seeking compensation from the respondent.

86. It is clear that the claimant throughout his training with the respondents disliked being supervised and was over-defensive when mistakes were brought to his attention, he was confrontational. The claimant's training could not have been as lacking as he maintained, as he must have satisfied the Solicitors' Regulatory Authority as he ultimately qualified as a solicitor on 1 April only one month later than originally expected. Furthermore, if the claimant's training had been so poor then on transfer to Madison and Morgan, either they or he would have suggested repeating part of his training in order to satisfy the necessary solicitors regulation requirements, and that clearly did not happen.

_____
Employment Judge Postle

Date: …….29.07.19……

Sent to the parties on: 29.07.19

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For the Tribunal Office