



EMPLOYMENT TRIBUNALS

Claimant

Mr D Cox

v

Respondent

Adecco Group UK and Ireland

Giant Professional Ltd

Croydon Council

PRELIMINARY HEARING

Heard at: London South

On: 12 July 2019

Before: Employment Judge Martin

Appearance:

For the Claimant: In person

For the Respondent: R1 – Mr Hayes - Solicitor

R2 - Mr Green – Counsel

R3 – Ms Higgins - Counsel

JUDGMENT AT PRELIMINARY HEARING

1. The Claimant did not make a protected disclosure
2. The Claims against the first and third Respondent are dismissed, and they are removed as Respondents in the proceedings.

REASONS

1. Written reasons are being provided at the request of the Claimant.
2. This is an application by the Respondents to strike out the Claimant's claim of whistleblowing on the basis that it has no reasonable prospect of success because the letter relied on of 5 July 2018 is not a qualifying disclosure or alternatively that a deposit order be made on the basis it has little reasonable prospect of success. I have been assisting by all parties, the Respondents having written submissions

and the Claimant giving his submissions orally. I have before me a full bundle of documents in excess of 411 pages. All parties had the opportunity to make submissions and any additional points they wanted to make.

3. The relevant law in relation to protected disclosures is

s47B(1) ERA 1996 Act, a worker has the right not to be subjected to a detriment by any act “done on the ground that [he or she] has made a protected disclosure”.

Disclosures qualifying for protection are defined by s43B, the material provisions being the following:

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following – ...

(b) that a criminal offence has been committed, is being committed or is likely to be committed

4. Qualifying disclosures are protected where the disclosure is made in circumstances covered by ss43C-43H. These include where the disclosure is made to the **employer** (s43C) or to a prescribed person (s43F).

5. I was referred to the following case law:

5.1 **Cavendish Munro Professional Risks Management Ltd-v-Geduld** [2010] ICR 325. Giving judgment, Slade J stressed that the protection extends to disclosures of information, but not to mere allegations. Disclosing information means conveying facts.

5.2 **Korashi v Abertawe Bor Morgannwg University Local Health Board** UKEAT/0424/09, which held that the workers belief must be objectively reasonable. Look at what the worker knew or what he ought reasonably to have known.

5.3 **Kraus v Penna Plc** [2004] IRLR 260, which held that the worker must reasonably believe that the information disclosed tends to show that a criminal offence has been committed, is being committed or is likely to be committed. Likely meaning more probable than not.

5.4 **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ 979 which held that the statutory test of the reasonable view of public interest is to be applied as a matter of educated impression.

5.5 **Parsons v Airplus International Ltd** UKEAT/0111/17– which held that there is no protection to a disclosure where the worker acted as they did solely in their own self-interest.

5.6 **Simpson v Cantor Fitzgerald Europe** UKEAT/0016/18, which held that in assessing whether a disclosure is protected there is no requirement to aggregate the disclosures, this is a matter for the Tribunal, and disclosures that are assumptions or speculative do not attract the protection of the legislation.

6. The disclosure relied on by the Claimant is his letter dated 5 July 2018, made to Adecco. In summary the allegations of criminality that the Claimant says the disclosure tends to show are that:
 - a. London Borough of Croydon puts unqualified agency workers into positions of trust ie EHCP Co-Ordinators
 - b. That they were billed out at a higher rate than the position demands
 - c. That they skimmed the money for their own benefit.

In essence, the Claimant is alleging that there is a fraudulent conspiracy going on.

7. After hearing the Respondent's applications, I spent time with the Claimant so that the Claimant could identify precisely what parts of the disclosure he relies on as being information and how this tended to show criminality and how it was in the public interest. The burden is on the Claimant to show that the disclosure was a protected disclosure. I wanted to be sure that the parts of this letter where he said information was clear to me. I first considered each individual matter I was taken to in isolation and then considered the letter in its totality.
8. The first matter (p195) relates to rates of pay. There is information about what rates of pay were but nothing here that indicates any form of criminality.
9. The second disclosure (p195) relates to what Adecco were paying Giant. He simply states this and states that he got a remittance advice from Adecco but there is no further narrative. This in isolation does not tend to show any criminality.
10. The third matter I was taken to, was in relation to 'DATA PROTECTION BREACH' (GDPR). Here the Claimant says he raised concerns about how people could have information about his pay. And says that it must be a breach of his data but does not give any further information.
11. The next matter I was taken to is where the Claimant says information was disclosed (page 198A). This relates to information given to the Claimant and did not comprise information he gave so this is discounted. The third paragraph says he raised concerns that Lynn, who had known about his role for the past 6 months, would suddenly want to know about his job title. This is not the disclosure of information but a concern and certainly nothing that suggests criminality.
12. Later on (p198A) the Claimant relies on a paragraph which says "*I asked Joey about overpayment and how this could be possible and this appears to me to be in fact an underpayment due to the contract etc*". This is not supplying information and is just an assumption made by the Claimant. Again, it is not suggestive of criminality.
13. I was taken to several parts of p198B by the Claimant. The first is the fourth paragraph down. Here information is given about the Claimant's day rate with Giant and what his time sheet says, with reference to his belief there was an underpayment. The rest of the paragraph refers to matters other people said to him so is not a disclosure of information by the Claimant and in any event, there is nothing here that is suggestive of any criminality.
14. Paragraph 6 on page 198B is relied on by the Claimant as conveying information of a fraud. There is no information in this paragraph to say who the Claimant says is

committing the fraud or what the fraud is. This is an allegation without the necessary information being given.

15. Under the heading 'underpayment' on p198A, the Claimant submitted this gives specific information as he said that "*in his reasonable belief something was not right and this amount was missing*". This paragraph relates to his claim that he is owed in excess of £24,000 which he says '*someone from Adecco*' has taken from him'. There is no information about how this sum has been calculated, or that money was in fact taken from him. This is an allegation only that '*something is not right*'. Even if it was information, something not being right is a long way from saying that a criminal offence has occurred.
16. Page 198C has three parts which the Claimant relies on. The first is the heading "*Breach of contract – fraud*" – this is simply a heading and does not convey any information. He says "this is a clear breach of contract as my original contract was due to end on 30th July". This does not suggest any criminality; it suggest a breach of contract which is a civil matter.
17. His summary on p198B is also relied on as conveying information. He referred to the first paragraph of his summary "*I suspect there is some sort of financial irregularity going on*". A financial irregularity does not mean criminality and there is no information of the nature of the alleged irregularity. He goes on to say that "*People are covering a job they are not qualified for, in a position of trust to vulnerable service users*". In his submissions the Claimant explained he was referring to another person called Mr J¹ who was not qualified. He may well have been, however this information is not in the letter and it was not possible to identify who the Claimant was talking about. This is an unsupported allegation which the legislation does not give protection to.
18. Finally, the Claimant relies on his final paragraph of this letter. "*I would like a response to my complaint and the salient point outlined as soon as possible, as I am intending to take this to the CEO of Croydon Council, As I believe with the evidence I have that someone within Adecco has been fraudulently claiming this sum of money from me and my data has been leaked to a third party without my consent*". Here the Claimant has cited two matters both of which are personal to him. First that money is being claimed from him (hence him wanting payment of over £24k) and second that his data protection rights have been compromised. This is not in the public interest as the concern raised only relates to him. Additionally, he is making assumptions and speculating but not providing information that tends to show a criminal offence has been committed.
19. Having considered the parts on an individual basis, I stood back and considered the letter as a whole. My role is to establish whether the Claimant has a reasonable prospect of showing that this letter is a qualifying disclosure warranting the protection of the legislation. There is no other information that a full tribunal would have. The letter speaks for itself. The Claimant has had the opportunity to explain his position and the Respondents have provided me with full submissions. I find that there is no reasonable prospect of the Claimant showing that his letter of 5 July 2018 is a qualifying disclosure. My educated impression of this letter is that it is self-serving and does not disclose matters that are in the public interest. I

¹ Mr J's full name has not been given as this judgment will appear on the public register

consider that there is no reasonable prospect of the Claimant convincing a tribunal otherwise at a full hearing. There is no further information that is relevant.

20. I have also considered whether the claimant made his disclosure to a relevant person. This is provided for in s43c. This provides that a disclosure must be made to the workers employer (at the time of this disclosure the Claimant was employed by the second Respondent and the disclosure was made to employees of the first Respondent) or to the person with legal responsibility for the matters. The Claimant alleges all three Respondents have legal responsibility. There is little reasonable prospect of the Claimant showing he made the disclosure to a relevant person as defined by the Act. The Claimant's claims of whistleblowing are therefore struck out as having no reasonable prospect of success.
21. This disposes of all matters in relation, to the third Respondent and the third Respondent is discharged from these proceedings.
22. The Claimant claims for wrongful dismissal and holiday pay will be considered separately.

Employment Judge Martin

Date: 13 August 2019