EMPLOYMENT TRIBUNALS

Claimant Mr C Sinclair

Respondent: Trackwork Ltd

HELD AT: Sheffield **ON:** 14 November 2019

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: Mrs L Mankau, Counsel
Respondent: Mr S Lee, Director

JUDGMENT

The Judgment of the Employment Tribunal is that the claimant's complaints of unfair dismissal brought under section 100(1)(a) of the Employment Rights Act 1996 and under section 103A of the 1996 Act fail and stand dismissed.

REASONS

1. After hearing evidence and receiving helpful submissions from each party, and after adjourning to consider matters, the Tribunal gave Judgment dismissing the claimant's claims. Written reasons were requested by the claimant's counsel.
2. The claimant was employed by the respondent as a track maintenance supervisor between 8 October 2018 and 21 December 2018.
3. By a claim form presented on 15 March 2019 the claimant presented a complaint that he had been unfairly dismissed. His case is that the reason for

his dismissal (or if there was more than one reason then the principal reason for his dismissal) was because:

3.1. He made a protected disclosure to his employer; or

3.2. That he was designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work and was dismissed for carrying out or proposing to carry out such activities.

4. The claimant pursues the complaints under section 103A (in the case of the public interest disclosure claim) and section 100(1)(a) (in the case of the health and safety claim). Neither of those causes of action require the claimant to have at least two years' qualifying service with the respondent. Thus, the claimant was entitled to bring his claim and have his case heard before the Tribunal.

5. The Tribunal was presented with a bundle of documents. The Tribunal also heard evidence from the claimant. From the respondent, evidence was heard from:

5.1. Mr Lee.

5.2. Jonathan Airey. He works for the respondent as a maintenance manager.

5.3. Robert Purshouse. He works for the respondent as an operations director.

6. The Tribunal also received a signed statement from Brian Hunter. He works for the respondent as an associate trainer. Mr Hunter was not present to give evidence before the Tribunal.

7. The Tribunal shall firstly set out the factual findings. Then there will be set out the issues and relevant law before going on to the Tribunal's conclusions.

8. The respondent is a specialist railway engineering company. According to its response to the claimant's claim, it employs 455 people. Mr Lee gave evidence (which was quite properly unchallenged) that the respondent prides itself upon being a family owned company with a stable workforce.

9. It is not in dispute that a large part of the respondent's business is engaged in servicing and maintaining those parts of the railway which are the responsibility of its clients (as opposed to those parts that fall within the responsibility of Network Rail). The respondent's commercial clients will often have responsibility for the maintenance of the track that runs into the client's premises, factory or quarry (as the case may be). It is not in dispute between the parties that this is a heavily regulated industry and that the respondent has an impeccable safety record. In its response to the claimant's claim the respondent said the following at paragraph 1:

"*Trackwork Ltd is a specialist railway engineering company that has been established for over 40 years. During this time the company has built a reputation with a whole range of clients for its ability to undertake a whole range of complex rail projects in a professional and above all safe manner. The safety standards required to work on the railway are generally regarded as being far greater than those within the construction industry with the rail industry being highly regulated to ensure that those standards are rigorously followed.*

In order to work on Network Rail Infrastructure (which is generally accepted as the highest standard) suppliers need to be registered under the Rail Industry Supplier Qualification Scheme (RISQS). In February this year Trackwork received their annual independent five-day audit against this scheme which audits in detail the company's management systems and procedures (including safety) and received a five-star rating which is the highest possible rating.

Trackwork also holds a license (issued by Network Rail) to operate its rail mounted plant and equipment on Network Rail Infrastructure. In order to obtain such a license, Trackwork has to demonstrate the highest standards of health and safety embedded within our day to day operations and receives regular audits from Network Rail to ensure those standards are maintained. It is obvious that if we didn't follow the standards an accident could have catastrophic consequences.

In 2018 Trackwork received the Subcontractor of the Year Award from Taylor Woodrow, which was judged on a number of criteria but primarily safety, for our work on a number of high profile contracts including the Crossrail project in London".

10. Evidence much in the same vein was given by the respondent's witnesses. The respondent's standards were corroborated by documentation within the bundle (particularly between pages 82 and 95). On behalf of the claimant, Mrs Mankau quite properly did not seek to gainsay the respondent's account of the general standards required to work in this sector and the respondent's record within it.

11. The system of work deployed by the respondent and which is of particular relevance to the case before the Tribunal is that its maintenance operatives will visit a client site in pairs. The operatives are answerable to a track maintenance supervisor. The line management structure is such that the track maintenance supervisor (which the Tribunal will now refer to simply as *"supervisor"* for brevity) is line managed by a maintenance manager.

12. The respondent employs a supervisor named Dave Webb. Unfortunately, Mr Webb became unwell. The respondent's thoughts turned to the recruitment of Mr Webb's replacement.

13. The claimant applied for the position. His application form is at pages 42 to 47. The application form shows that the claimant had worked for Network Rail for a period of around 13 years between 2003 and 2016.

14. Mr Purshouse interviewed the claimant on 14 August 2018. In paragraph 3 of his witness statement Mr Purshouse says that, "*during the recruitment process the quality of candidates was very poor, and in hindsight Carl [the claimant] got the job by default due to the fact he had worked on the railway for a considerable length of time, something that other candidates had not. During the interview several important matters were discussed, the main one being his lack of knowledge of track maintenance and his understanding of track layout in depots and sidings, we were keen to point out that we do not maintain any Network Rail infrastructure and that our client base covered train and freight operating companies, along with heavy industrial sites such as steel works, ports, harbours, quarries and car handling plants. We also explained that part of his role was to monitor and audit the track maintenance teams on a regular basis to ensure the quality of maintenance was to the prescribed standard and*

that the tracks were being maintained such that they were always safe and runnable for the passage of trains. Carl's previous role within the rail industry was that there was that of a safety critical nature rather than track maintenance. However, he was very positive that he could make the transition to a maintenance supervisor. Although not the ideal candidate as his knowledge was clearly lacking we felt that whilst Dave Webb was able to work, Carl would receive the training and mentoring necessary to make him competent in the role".

15. Mr Purshouse goes on to say in paragraph 4 of his witness statement that, "*during the interview Carl asked if we'd seen him on Good Morning TV, when I said no, he proceeded to play the interview on his phone, the interview concerned a violent incident that had occurred at his home with an intruder and whilst I might sympathise with his actions I did think that playing the interview at a job interview was a very strange thing to do"*.

16. Paragraphs 3 and 4 of Mr Purshouse's witness statements were unchallenged by Mrs Mankau. There was corroboration for Mr Purshouse's observation about the quality of the candidates for the supervisor role from Mr Airey. He said in the course of his evidence before the Tribunal that recruitment in the industry was difficult.

17. It was not in dispute that the claimant did play some footage of the incident at his home during the course of the interview with Mr Purshouse. In evidence, the claimant explained that he did this because the case had achieved some notoriety. The claimant had thwarted an attempted burglary at his home. It had been captured upon his domestic CCTV system. Unfortunately for the claimant, this had resulted in a criminal charge being brought against him in respect of which he was acquitted. There is merit in the claimant's contention that he had a strong defence given that the jury only took around 25 minutes to consider the matter. Further, the claimant's story had appeared in the national press. The claimant also appeared on Good Morning TV where he was interviewed by the very well-known TV presenter Phillip Schofield. The claimant said that given this notoriety he thought it safest to disclose what had happened rather than face an uncomfortable situation later were the respondent to find out about it from another source. The Tribunal has sympathy with the claimant's position. That said, the respondent was not so concerned about the matter when it was disclosed at interview such as to prevent them offering the claimant the role.

18. Mr Airey conducted the second interview with the claimant. In paragraph 4 of his witness statement Mr Airey says that he discussed with the claimant "*what was expected of him as an employee of a family owned company, his expected duties and plan for his integration*".

19. Mr Airey then goes on to say this in paragraph 5 of his witness statement:

"It is not in any doubt in my mind that part of the duties given to the claimant by me was to implement the Trackwork Safe System of work procedure. This procedure is generally based on the Network Rail NR/L3/OHS/019 standard and amended to suit particular site conditions. My line manager was aware of my intentions to use the claimant to implement, audit and be responsible for the day to day management of this system. Please note that we never work without a locally agreed safe system of work. However, this may not always reflect the Network Rail standard as many of our clients do not recognise any of the Network Rail terminologies or rules".

20. The Tribunal shall refer to the Network Rail standard referred to by Mr Airey simply as *"NR019".* What is notably absent from Mr Airey's witness statement is any description by him (or by any of the other respondent's witnesses) of the other employees being briefed that the claimant had a mandate to implement, audit and be responsible for the day to day management of NR019.

21. In paragraph 11 of his witness statement Mr Airey says that he "*wanted the transition between our current maintenance supervisor and the claimant to work. I reiterated to him that we were a family business with a good percentage of long-term employees and a slow and steady approach would be necessary to implement change*".

22. For the claimant's part, he says in paragraph 2 of his witness statement that, "*I was told in my first interview with Bob Purshouse and then at my second interview with Jonathan Airey that the respondent required me to work to the prescribed 019 standard of Network Rail. This required me to be overly cautious, explaining that even if a work area was not regarded by Network Rail as an area requiring a safe system of work ("SSOW") I would be required to work to a SSOW"*. He goes on to say in paragraph 3 that, "*I was responsible for a team of employees working on the track. My role required me to ensure that a safe system of work was followed by the team. I became aware that the team were not carrying out a safe system of work, including the completion of the COSS forms"*.

23. It not being in dispute, the Tribunal can do no better than recite what is said on behalf of the respondent in its response to the claimant's claim about the issue of the position of a '*COSS'* and *'COSS forms'.* The respondent says, "*a COSS is a 'Controller of Site Safety' who is responsible for establishing a safe system of work. However, the important thing to note is that a COSS is a Network Rail qualification that dictates the Network Rail procedure for establishing a safe system of work with the associated briefing forms etc to be used on Network Rail controlled infrastructure (the main line). Trackwork do <u>not</u> carry out any maintenance on the main line and as such are not bound by Network Rail's systems or procedures when carrying out maintenance in the depot. Trackwork are free to implement any safe system of work that is appropriate to the circumstances and that has been agreed with the client."* The respondent goes on to say that, "*the claimant was employed as a track maintenance supervisor to work in train maintenance depots, facilities not covered by a COSS or the Network Rail safety requirements, where train movements are restricted to 5 miles per hour as opposed to 100 miles per hour on the main line (where the claimant was familiar with working) and clearly different systems and procedures can be adopted by our clients, particularly as our maintenance clients do not include Network Rail"*.

24. The position therefore was that safe systems of work were devised by the respondent's clients and to which the maintenance operatives would work. Most if not all of these 'local systems' (for want of a better expression) worked quite differently to those operated by Network Rail.

25. Difficulties were not long in manifesting themselves. On 26 October 2008 the claimant visited the Jaguar Land Rover site in Liverpool. In paragraph 4 of his witness statement the claimant says, "*I was required to meet with the COSS, Phil Clarke."* He goes on to say in paragraph 5 that, *"At this site I was not provided with a COSS brief, the SSOW, at first and had to ask for one to be provided. When I explained to Phil Clarke as the COSS that I expected him to*

provide a COSS brief to the team with regards to complying with the SSOW and that this should place every time they arrived on site, Phil Clarke replied that they do not do COSS briefs if they are only a two man gang as Trackwork do not pay for a COSS".

26. The claimant reported the matter to Mr Airey on 29 October 2018 (that being the next working day). The claimant says that Mr Airey was supportive of him and told him to "*make sure that they started always following a SSOW"*. Mr Airey confirmed in evidence that the claimant's account was correct.

27. The claimant then encountered another difficulty at a site in Teeside on 2 November 2018. This again involved Mr Clarke. The claimant prevailed upon Mr Clarke to give a COSS brief. The claimant says that he brought this matter to the attention of Mr Airey and then brought other matters to the attention of Mr Airey and Mr Purshouse on a number of occasions after 2 November 2018. Mr Airey had no recollection of the incident at Teeside on 2 November 2018 but agreed that the claimant had raised the issue about the failures to give a COSS brief repeatedly after he initially raised it on 29 October 2018. Mr Airey did not dispute that the claimant had raised the issue of the Teeside incident of 2 November 2018 with him. Given Mr Airey's ready acceptance of the fact that the claimant repeatedly raised the matter the Tribunal finds that on balance of probability the claimant did raise with Mr Airey what had happened in Teeside concerning Mr Clarke.

28. Mr Airey then says at paragraph 6 of his witness statement that, "*at the time of the claimant's employment I had fourteen members of staff directly under my control. Twelve of them at some point following the start of the claimant's employment approached me tentatively at first then as time moved on more animatedly regarding the claimant's overall attitude. Two additional people within the business approached me in similar circumstances with the same concerns. The percentage of my staff who approached me with extremely similar accounts of him was very concerning to me and this was reported to my line manager Bob Purshouse"*.

29. Mr Purshouse says that Mr Airey raised these concerns with him. For Mr Purshouse's part he also recounts (at paragraph 6 of his witness statement) a report from Mr Parkin, a training manager who had received reports from Mr Hunter about the claimant's behaviour upon a training course. The Tribunal can give little weight to Mr Hunter's witness statement given that he was not present in the Tribunal to have his evidence tested by the claimant's counsel. The Tribunal will make some brief further remarks upon an aspect of Mr Hunter's evidence towards the end of these reasons. That said, the Tribunal accepts that Mr Purshouse did receive expressions of concern not only from Mr Airey but also from Mr Parkin.

30. Mr Purshouse then received reports of an incident which took place at Craigentinny in Scotland on 21 November 2018. An incident occurred involving the claimant, Mr Clarke and another employee named Mark Binney. Mr Binney and Mr Clarke gave their accounts of the incident: Mr Purshouse was copied into their emails at pages 68 and 69 of the bundle. The claimant likewise gave his account (copied at pages 70 and 71). What appears to be a fuller version of the claimant's account is at pages 75 to 77. The parties' accounts differ. However, on the claimant's version of events there was a heated discussion with exchanges in Anglo-Saxon terms between the parties. The claimant also informed the investigating officer Lee Carmody that matters had culminated in

the claimant giving Mr Clarke what was described by the claimant as a *"matey tap".* Mr Clarke interpreted this as a strike.

31. Mr Purshouse decided to take no further action arising out of the matter that had occurred at Craigentinny. It was Mr Purshouse who decided to bring the claimant's contract of employment to an end. In the letter of dismissal dated 13 December 2018 he expressly disavowed the incident of 21 November 2108 as being a reason for the dismissal.

32. The evidence of Mr Purshouse and Mr Lee is that the reports being received from Mr Airey about misgivings upon the part of members of his team coupled with the incident of 21 November 2018 caused them to have concerns about the claimant's ability to integrate within the team. Thoughts then began to turn towards bringing the claimant's contract of employment to an end.

33. In paragraph 7 of his witness statement Mr Airey lists a number of matters that were raised with him by members of his team about the claimant. These are as follows:

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- *The claimant's male bravado relating to gambling and pornography.*
- *The claimant's attitude and behaviour on site which came across as aggressive.*
- *The claimant's over enthusiasm to show a video of him beating up a man who was breaking into his house and detailed information relating to this.*
- *Further discussions relating to the claimant's subsequent appearance on the television programme This Morning and a photograph he claimed was taken up the female presenter's skirt.*
- *The claimant openly showing pictures of a female who he claimed to be his wife in pornographic situations and discussed wife swapping.*
- *The claimant's "do as I say or else" attitude.*
- *The claimant's over concern regarding safe systems of work and his lack of track knowledge.*
- *A general unwillingness to listen and learn and a "know it all" attitude.*
- *A rude disrespectful attitude to our trainers, they felt he was a risk to the business.*
- *An argument and subsequent physical confrontation between the claimant, Phil Clarke and Mark Binney on site. This was a minor incident in the claimant's opinion and something far more serious in the opinion of Phil Clarke and Mark Binney (ref investigation report – document 9, page 66)."*

34. Mr Airey said that the claimant never exhibited such traits when he was with him. Mr Airey says about the claimant that, "*he was an enthusiastic character who at times I felt needed to calm down and let things progress at a slower pace than he wanted"*. Mr Airey says that he raised the issues with Mr Purshouse and Mr Carmody.

35. Before the Tribunal, the claimant accepted that several of the issues referred to by Mr Airey (cited in paragraph 34) had their roots in what had occurred in

dealings between the claimant and the employees whom he was managing (albeit the claimant did not accept the respondent's employees' pejorative interpretation of many of the matters raised).

36. The Tribunal has already referred to the issue of his appearance upon GMTV and the playing of the CCTV footage of the incident. The Tribunal finds on the balance of probability that the claimant did play the CCTV footage to the respondent's operatives. It is more probable than not that he did so. He did not deny doing so before the Tribunal. If he was willing to play the footage at interview before senior members of the respondent's organisation then it is unlikely that he would be deterred from so doing in front of those subordinate to him.

37. The claimant gave a plausible explanation about the issue of gambling. He said that his daughter works in a horse riding stable and had received information that a fancied horse was running at a racecourse. The claimant had passed this tip on to other members of the team. The claimant also gave what the Tribunal accepts to be a truthful account of showing colleagues some photographs of his wife taken on holiday. There was no evidence to suggest that there was anything improper about the photographs which he displayed.

38. In the Tribunal's judgment, there is much in Mrs Mankau's point that what was perceived by the respondent's operatives as arrogance upon the part of the claimant was borne of the claimant seeking to do what he had been instructed to do by Mr Airey in seeking to implement NR019. The requirements of NR019 were very much at odds with the locally deployed safe systems of work being operated by the respondent for its clients. In the Tribunal's judgment friction was thus created between the claimant as supervisor on the one hand and those whom he was line managing on the other. As the respondent accepts, this led to complaints to Mr Airey and others (which were then forwarded up the management chain) about the claimant's conduct.

39. In the Tribunal's judgment, actions of the claimant (such as the passing on of the horse racing tip and the display of photographs of his wife) were embellished and exaggerated to the detriment of the claimant. However, the respondent's management was nonetheless faced with a significant problem. A loyal workforce was plainly unhappy. The respondent's management gave credence to many of the complaints upon the basis of what the respondent perceived to be the claimant's questionable behaviour at interview in playing the CCTV footage of the burglary incident. True it is that the respondent nonetheless gave the claimant the role. However, that must be set in the context of Mr Purshouse's evidence that the quality of candidates was generally poor and the respondent's need to have somebody to take over from Mr Webb. It is plain from Mr Purshouse's evidence that the claimant was a far from ideal candidate. That is no reflection upon the claimant himself whose experience with Network Rail was not in track maintenance. Nevertheless, the fact remains that the respondent employed the claimant with reservations and reasonably lent credence to the employee's complaints because of their own experience of the claimant's behaviour in interview in playing the CCTV footage.

40. The Tribunal pauses to deal with one aspect of the complaints received by Mr Airey. One of these was the allegation that the claimant had taken a photograph *"up the female presenter's skirt".* In the Tribunal's judgment, the claimant was quite correct to say that this was an absurd allegation. It would frankly be hard to think of a more public setting than an appearance upon

national TV surrounded by cameras. If the respondent had received a report only about that allegation then, in the Tribunal's judgment, the report was of such absurdity that to take action upon it would have led the Tribunal to drawing an adverse inference against the respondent. Nevertheless, even discounting that allegation, in the Tribunal's judgment the respondent reasonably entertained concerns about the impact that the claimant was having upon its workforce.

41. The Tribunal has a great deal of sympathy for the claimant. The claimant found himself the victim of poor management upon the part of the respondent. The claimant was given a brief to implement NR019. He set about doing that with all due diligence. Indeed, that he did so gave rise to one of the concerns related to Mr Airey about the claimant being *"over concerned"* regarding safe systems of work. Unbeknown it seems to the claimant the employees whom he was managing had not received the same brief. As far as the employees were concerned it was business as usual and therefore inevitably friction was created because the claimant was trying to implement a different system of work. Mr Airey's message evidenced in paragraph 10 of his witness statement (that he wished to see a slow change in the way in which the respondent operated) was not at any stage conveyed to the claimant. The employees whom the claimant was supervising therefore perceived the claimant as being overcautious and somewhat zealous in his approach.

42. A decision was taken by Mr Purshouse to dismiss the claimant. Mr Purshouse spoke to the claimant on 11 December 2018. The claimant recorded the call. The transcript is at pages 72 to 74. Mr Purshouse said in evidence before the Tribunal that he found the conversation to be difficult. Certainly, Mr Purshouse's discomfiture is conveyed by the written word.

43. The claimant was plainly distressed to be told that he was being dismissed in circumstances where he was simply doing what he had been asked to do. He suggested to Mr Purshouse that the respondent's employees were not working to NR019 and that rather than backing up the claimant Mr Purshouse was siding with the employees. As the claimant put it, "*the tail was wagging the dog"*. There is much merit in the claimant's description of the respondent's approach and decision.

44. The Tribunal now turns to a consideration of the relevant law and the issues in the case. The Tribunal shall start with the health and safety case.

45. It is not in dispute that the claimant was designated by the respondent to carry out activities in connection with preventing or reducing risks to health and safety at work. Indeed, that was very much part of the claimant's remit. It is also not in dispute that the claimant was carrying out or proposing to carry out such activities upon 26 October 2018, 2 November 2018 and upon many occasions after 2 November 2018 until the date of his dismissal. The question for the Tribunal therefore is whether the claimant was dismissed or, if there was more than one reason for his dismissal, the principal reason for dismissal was because he was carrying out health and safety activities.

46. The claimant has less than two years' qualifying service. It follows therefore that the burden is upon him to show that this was the reason for his dismissal.

47. It was no part of the claimant's case that the respondent simply decided to dismiss him because the claimant was carrying out health and safety activities. The claimant's case is presented upon a somewhat more nuanced basis. This

is that the respondent's employees were complaining to the respondent's management about the claimant's health and safety activities and that that is what prompted the respondent to dismiss the claimant. Mrs Mankau said that the relevant provision of the 1996 Act should be given a wide construction given that the mischief against which it is aimed is to prevent employers from thwarting employees carrying out activities protective of health and safety. Therefore, management being influenced by the fact that employees were unhappy about having a health and safety regime imposed upon them fell four-square within the ambit of section 100(1)(a). An employer that dismisses an employee because the employee was the subject of embellished or exaggerated accounts of misconduct from fellow workers while carrying out health and safety duties effectively dismisses the employee for that very reason. In principle her submissions, in the Tribunal's judgment, have some force.

48. However, the Tribunal has to view matters in the context of the respondent operating in a health and safety critical environment. This is a respondent with an impeccable health and safety record. It has to adhere to exacting health and safety standards in order to operate. It has won awards (such as the Taylor Woodrow Subcontractor of the Year Award for 2018). The case also has to be seen in the context of Mr Airey specifically recruiting the claimant to take over from Mr Webb and Mr Airey encouraging the claimant to implement NR019. Further, when the claimant complained that he was meeting resistance from Mr Clarke, Mr Airey was supportive of the claimant.

49. Given that context, the Tribunal has to weigh in the balance the reason for the respondent's decision to dismiss the claimant. Was it because, as the claimant would have it, he was carrying out health and safety activities. Or alternatively was it because, as the respondent would have it, the claimant was not integrating within the workforce. By this, the respondent plainly meant that the claimant was creating friction with his (justifiable) approach to matters.

50. True it is but for the fact that the claimant had been recruited into the supervisor role and that he was carrying it out he would not have been dismissed. However, a *"but for"* analysis is not apt. The question for the Tribunal is what was the reason of a principal reason for the claimant's dismissal. Why did the employer act as it did?

51. In my judgment, it is against the probabilities that this particular employer would dismiss the claimant simply because he was carrying out his health and safety duties for the reasons given in paragraph 48 even if this did generate complaints from the other employees. In my judgment, the respondent decided to dismiss the claimant because of the upset that the respondent's approach to NR019 (through the agency of the claimant) was causing to the respondent's workforce. The respondent has mismanaged matters such that the claimant was diligently carrying out his duties which was subjectively seen by those whom he was managing as overzealous. Relations had soured and it was for this reason that the respondent decided to dismiss the claimant.

52. The respondent is asserting personality clash and upset on the part of its loyal workforce caused by its own mismanagement of the situation as the principal reason for dismissal. It was not the carrying out of health and safety duties that caused the respondent to dismiss the claimant but rather that a loyal workforce was becoming demoralised by the manner in which health and safety was being managed. The employees did not complain about being subject to health and

safety management as such but rather by the way in which the respondent was going about matters. It was the claimant's methodology which generated the complaints and not that he was acting in his capacity as a supervisor to implement a health and safety regime in and of itself.

53. The Tribunal makes this finding with a heavy heart. It is tough on the claimant who was only doing what he had been set on to do by the respondent. The respondent had failed to manage the employees' expectations of the claimant. Happily, Mr Webb has been able to return to work as supervisor. It is to be hoped that should the respondent continue to pursue the move to NR019 the situation will be better managed either by exhorting the supervisor to deal with matters more incrementally or briefing the employees that NR019 is to be the operative standard henceforth.

54. The Tribunal then turns to the public interest disclosure claim. The Tribunal finds that the claimant did make a disclosure (that qualifies for protection) to the respondent as his employer upon a number of occasions. The disclosures were made upon 26 October 2018, 2 November 2018 and upon many occasions thereafter. It is not necessary to set them all out. They are all of the same character. The claimant provided information to the respondent to the effect that the respondent's employees were not complying with NR019. The claimant plainly had a reasonable belief in that information. Indeed, the respondent accepts that he was correct to make this observation. The Tribunal also finds that the claimant had a reasonable belief that the disclosure was in the public interest. It cannot be in doubt that the safe operation of the railway is in the public interest.

55. The question therefore is whether the dismissal of the claimant (or if there was more than one reason then the principal reason for it) was because he had made the protected disclosures. This part of the claimant's claim fails upon causation for the same reasons as for the health and safety case in paragraphs 51 and 52. Those reasons need not be repeated.

56. The Tribunal concludes matters by repeating the expression of sympathy for the position in which the claimant found himself. The Tribunal also makes a positive finding that the claimant is a safe operative and rejects Mr Hunter's case that the claimant was in some way dangerous. Mr Hunter did not attend the Tribunal to be tested as to his evidence. The Tribunal heard evidence from the claimant and is satisfied on balance that the claimant is a safe and competent health and safety officer.

Employment Judge Brain

Date 3 December 2019