# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr M Ahmed**

**Respondent:** **London General Transport Services Limited (T/A Docklands Buses Limited)**

**Heard at:** **East London Hearing Centre**

**On:** **9, 10 & 11 July 2019**

**Before:** **Employment Judge Barrowclough**
**Members:** **Mr R Blanco**
**Ms J Owen**

**Representation**

Claimant: In person
Respondent: Mr R Bailey (Counsel)

**JUDGMENT** having been sent to the parties on 17/08/2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

# REASONS

1 At the conclusion of the full merits hearing on 11 July 2019, we delivered a unanimous ex tempore judgment, dismissing all the Claimant's complaints for the reasons then given in summary. A short judgment was sent to the parties on 17 August, although the Claimant says that he did not receive the Tribunal's letter enclosing that judgment until early September, and that he then wrote to the Tribunal within a couple of days requesting written reasons. Although the Claimant's request was therefore received outside the 14-day period provided for in Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, in the circumstances we give the Claimant the benefit of the doubt, and duly provide full reasons.

2 We heard the Claimant's claim of unfair dismissal over the course of a three day hearing (9 to 11 July 2019). The Claimant represented himself, and gave evidence in support of his claim. The Respondent was represented by Mr Bailey of Counsel, who called as witnesses (a) Mr Nick Faichney, at the relevant time a general manager with the Respondent at their Silvertown garage, who chaired the Claimant's disciplinary hearing and who took the decision to summarily dismiss him; (b) Mr Daniel Corbin, an area

general manager for the Respondent, who chaired the Claimant's appeal hearing; and (c) Mr Christopher McKeown, the Respondent's chief engineer who was the side member on the Claimant's appeal panel which dismissed his appeal. In addition to statements from the witnesses from whom we heard, the Tribunal was provided with an agreed bundle, a chronology and an agreed list of issues, and written closing submissions from both the Claimant and Mr Bailey.

3 In our judgment, the only complaint before the Tribunal which we have jurisdiction to hear and determine is one of automatically unfair dismissal for making a protected disclosure, in breach of ss. 103(A) and 43(A) of the Employment Rights Act 1996. Mr Bailey is, we think, correct in pointing out that there was an apparent error or oversight at the preliminary hearing of this claim, in that the Claimant simply does not have, on any view, the required two years' continuous employment prior to dismissal to enable him to bring a complaint of 'ordinary' unfair dismissal, in breach of s.94 of the 1996 Act. Accordingly, issues of fairness are not relevant for the purposes of our determination, or indeed the claim as a whole, save in so far as they impact or throw light on the two critical and determinative issues in this case, which are (a) did the Claimant actually make any protected disclosures; and (b) if so, were any such disclosures the reason, or the principal reason, for his dismissal?

4 The Respondent is a bus company, one of a number in the GoAhead Group plc which cover the London area, and it is agreed that the Claimant was employed by them as a bus driver, based at their Silvertown garage, from 31 October 2016 until his summary dismissal on 26 March 2018. At the time of his dismissal, the Claimant had approximately nine years' experience as a bus driver, working for a number of employers including the Respondent. Shortly after he commenced employment with the Respondent, the Claimant complained that he was not being paid properly and in accordance with his correct grade and contractual rate of pay. The Respondent did not agree, and in due course the Claimant's complaint was escalated to Mr John Trayner, the Respondent's managing director, by means of an email in which the Claimant said that he was prepared to take matters further, including to the Employment Tribunal if necessary, if no satisfactory outcome was achieved. Since the Claimant remained dissatisfied, he did indeed issue a claim against the Respondent in this Tribunal for unlawful deductions from wages on 3 August 2017.

5 That claim was heard, determined and dismissed by Employment Judge Allen at a hearing on 23 October 2017, when the learned Judge also determined that the Claimant's rate of pay and his grade was that contended for by the Respondent for the reasons set out in his judgment, a copy of which is at pages 91 to 100 in the agreed bundle. The Claimant was unhappy with that result and, through solicitors that he then instructed and following receipt of the Tribunal's written reasons, he sought a review; but that was unsuccessful and his application was refused on 23 November 2017.

6 The Claimant subsequently refused to sign an amended contract of employment, (pages 104 to 113) which the Respondent produced and which specified his direct grade and rate of pay, as found by the Tribunal, and in February 2018 he submitted a grievance, which once again concerned his pay and which related to the overtime that he had worked on three specific days, for which the Claimant accepted that he had been paid, but not, he alleged, at the appropriate contractual rate. That grievance was dismissed shortly thereafter for the reasons then put forward by the Respondent, who believed that the

Claimant had in fact been paid in full and had received all the monies to which he was entitled.

7 The Claimant then wrote once again to Mr Trayner, by email on 2 March 2018 (pages 118/119). In that email, the Claimant sets out at some length his unhappiness about the pay and grading issues which he had unsuccessfully pursued before the Tribunal. The Claimant's stated conclusion was that he believed that the Respondent would never agree to change his grade as he had requested and considered appropriate, and that he had therefore decided to challenge the manner in which he alleged the Respondent company was being run. That was by means of a draft letter, a copy of which was attached to the Claimant's email, which was addressed to a number of people, including the Prime Minister, the Mayor of London, and a number of relevant London Transport Authorities or senior individuals within them. In his draft letter (pages 120/121), the Claimant sets out a number of allegations or matters of serious concern relating to the Respondent's undertaking. Those include that defective and unroadworthy buses were being knowingly used and sent out for public use by the Respondent; that the Respondent's drivers were being overworked and undertaking work in breach of their driving hours, thereby putting both themselves and others including the travelling public at risk; that inadequate or insufficient preparation and inspection time was allowed by the Respondent prior to buses leaving the depot on working duties; that speeding by buses was sanctioned, or at least permitted by the Respondent; that fraudulent claims for mileage undertaken were being submitted by the Respondent to Transport for London (the relevant authority), when the buses concerned had in fact broken down; and that the Respondent wilfully disregarded or ignored statutory restrictions on drivers' hours, together with a number of less significant issues.

8 In his covering email, the Claimant told Mr Trayner that he would not send his draft letter to the various named recipients before 12 March, some ten days after the date of his email, to enable Mr Trayner to provide, as the Claimant put it, *'comments or a response'* in the interim period.

9 The Claimant's email to Mr Trayner and the accompanying draft resulted in the Claimant being invited to, and indeed attending, a fact-finding meeting with Mr Canning, a reporting and operations manager, who acted in this instance as an investigating officer. That meeting took place on 14 March 2018, when the Claimant told Mr Canning, as he had already informed Mr Trayner in his email, that he had in his possession documentary evidence which would substantiate and confirm the allegations set out in his draft letter about the conduct of the Respondent's undertaking; but refused, when requested, to disclose to Mr Canning or to the Respondent generally any such documentation, or to provide any specific details concerning those allegations. At the conclusion of that fact-finding meeting, and in the light of the approach adopted by the Claimant, Mr Canning suspended him from work, and the Claimant was duly asked to attend a disciplinary hearing five days later on 19 March to face an allegation of what was described by the Respondent as a '*breach of trust and confidentiality*' (pages 127/128), which he was told might result in his summary dismissal. Mr Faichney in fact treated the allegation as a breach of the implied term of mutual trust and confidence.

10 For reasons that are not relevant or important, the disciplinary hearing did not go ahead on 19 March, and was rearranged for 26 March, when the Claimant did attend accompanied by Mr Morrison, his union representative, the hearing being conducted by

Mr Faichney, the general manager at the Respondent's Silvertown garage. At the conclusion of the hearing, during which the Claimant was asked once again to produce the supporting documentation which he said he had, but could not do so since he said that he had destroyed it, Mr Faichney adjourned briefly for consideration. On his return, Mr Faichney said that in his view the Claimant's conduct, as represented by the email and the draft letter which he had sent to Mr Trayner, was nothing more than a device or threat which the Claimant was using to try to engineer the improvement in his pay and grading which he had been consistently seeking. That, in Mr Faichney's view, had destroyed the essential requirement of trust that had to exist between the Respondent as employer and Claimant as employee for any continuing employment relationship; and accordingly, he decided that the Claimant should be summarily dismissed.

11 The outcome of the Claimant's disciplinary hearing was confirmed to him by letter dated 27 March (pages 137/138), which notified him of his right of appeal. The Claimant duly exercised that right (page 136), essentially appealing against the sanction imposed of summary dismissal, as well as sending Mr Trayner a written apology for his behaviour (page 183A). The Claimant's appeal was heard on 23 April by Messrs Corbin and McKeown, the Claimant attending with his union representative, on this occasion Mr Stagg. The appeal panel came to essentially the same conclusions as those reached by Mr Faichney, and in their outcome letter dated 25 April (pages 157/158) upheld both his decision that the Claimant had fatally undermined the Respondent's trust, as well as the penalty imposed of summary dismissal, despite the Claimant's request for clemency and to be given another chance.

12 As identified at the start of these reasons, the determinative issues for the Claimant's remaining complaint of automatically unfair dismissal are whether the Claimant made any protected disclosures; and if he did, whether any such disclosure(s) was the reason, or at least the principal reason, for his dismissal. The Claimant's case is that the matters set out in his draft letter at pages 120/121 in the bundle, which he sent to Mr Trayner on 2 March 2018 under cover of his email at pages 118/119, amount to protected disclosures; and that it was because the Respondent did not want those damaging revelations about the service it was providing to the travelling public to be aired or circulated that he was dismissed. We set out the conclusions we have reached in relation to those issues in turn.

13 S.43B of the Employment Rights Act 1996 defines what disclosures qualify for protection under s.43A. There must be a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show that a criminal offence has been, is being, or is likely to be committed; or that someone has failed, is failing, or is likely to fail to comply with a legal obligation; or that the health and safety of an individual has been, is being or is likely to be endangered. There are other situations where disclosure may be protected but, as was not contested before us, the three identified above are those relevant to this case. The 'live' issues that we have to determine are whether there was a disclosure of *'information'*, and whether the Claimant reasonably believed that disclosure was in the public interest.

14 In assessing whether there has been a disclosure of '*information'*, the EAT (in **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325**) noted the distinction between '*information*' on the one hand, and the making of an '*allegation*', as set out in s.43F, on the other; and held that the ordinary meaning of giving

information is to convey facts. Mr Bailey submits that the Claimant's draft letter does not contain or consist of specific and detailed incidents or 'facts', but rather generalised allegations; and accordingly, is not protected. With respect, we disagree. Whilst the issue is not straightforward, we find that the most significant matters raised in the letter, for example that unroadworthy vehicles were being put into service with the Respondent's knowledge, that the limit on drivers' hours and the governing statutory regulations were being ignored or abused, and that speeding by bus drivers was being tolerated and permitted, amounted to information about the general state of affairs and the factual manner in which bus services were being provided by the Respondent, albeit unparticularised. The Claimant's draft letter contains a great deal more than bare assertions that the Respondent was simply failing to comply with, for example, health and safety requirements, or its legal obligations, and we find amounts to a disclosure of information. Mr Bailey sensibly accepted that, if we came to that conclusion, any such disclosures would reasonably be believed to be (and would be) in the public interest.

15 Accordingly, we then proceed to consider whether the Claimant reasonably believed that any of the information disclosed tended to show a failure by the Respondent to comply with its legal obligations, or that a crime or threat to individuals' health and safety had been or was being committed. In our unanimous view, the Claimant did not hold such a belief. If, as the Claimant repeatedly stated, he had a number of specific documents which supported his assertions, then it simply made no sense for him to destroy them, as he said he did following his fact-finding meeting with Mr Canning on 14 March. The Claimant's assertion that in so doing he was simply obeying the non-disclosure provisions of his contract of employment does not bear any examination. The disclosure of relevant documents which the Respondent repeatedly requested was to themselves, to the very managers who were conducting the Claimant's disciplinary proceedings, rather than to any third party; and we consider that it would have been obvious, and that the Claimant must have appreciated, that destroying those documents would completely undermine any defence he might have to any allegation of threatening or seeking to coerce the Respondent, and made his own position infinitely worse. Secondly, the Claimant made no attempt to disclose any such incriminating documents either to the Respondent anonymously or through his union representative. Thirdly, when asked at his disciplinary hearing, the Claimant could not provide any details at all of any of particular incidents or events which he says were described in the documents that he had seen and apparently destroyed. As Mr Bailey points out, since the Claimant said that he had not been personally involved in any of the incidents there described, he would have had to read those documents in some detail and at some length in order to be able to raise the allegations he did in his draft letter, as well as to establish that any belief he held was reasonable. Had the Claimant in fact read such documents, we think it is reasonable to expect him to have had at least some recollection of some of the most significant details (for example, when and on which routes unroadworthy buses had been sent out and by whom, or when and on what routes speeding had been permitted), and to have been able to relay that information when requested, at the investigation and/or disciplinary hearings which took place only a few days after his draft letter was written. In fact, the Claimant could provide no such information or details. We are driven to the conclusion that no such documents ever actually existed, that the Claimant did not destroy them as he alleged, and that there was no basis in reality for the allegations contained in the Claimant's draft letter. It must follow that the Claimant cannot have had a reasonable belief that the information disclosed in the draft letter he sent to Mr Trayner tended to show any of the various potential failures set out in s.43A by the Respondent. There was no protected disclosure by the Claimant.

16 That finding is sufficient on its own to dispose of the Claimant's complaint. However, in case we were wrong in coming to that conclusion, we go on to consider whether the information disclosed to Mr Trayner in the Claimant's draft letter was the reason or principal reason for his dismissal.

17 In our judgment, the Claimant's email to Mr Trayner at pages 118/119 and the accompanying draft letter can only be interpreted and described as a threat to the Respondent. It is not possible to see those documents in any other light. First of all, the documents must be seen in the context of the Claimant's lengthy and continuing dispute with the Respondent, and his general unhappiness about his pay level and grading, which we have summarised above. Secondly, there are the terms of the Claimant's email, which starts by detailing the Claimant's unhappiness at the Respondent's treatment of him and the history of his pay and grading dispute, before going on to say that the Claimant had now realised that his pay grade would never be changed by the Respondent, and that he had decided to challenge the manner in which the Respondent company was run. So there is an obvious connection between the Claimant's pay issue and his proposed disclosure. We find that if the Claimant really had genuine concerns concerning the way in which the Respondent operated, there would be no reason or need to include the history of his pay dispute with the Respondent in his email to Mr Trayner. We reject the Claimant's suggestion that he did so only in order to identify himself to Mr Trayner. In the first place, Mr Trayner would be able to find out who the Claimant was and what role he undertook very easily from the Respondent's HR department, if he did not already know; secondly, the Claimant had written to Mr Trayner on the subject of his pay only months earlier and subsequently taken the Respondent to the Tribunal, so that it is highly unlikely that any further introduction would be necessary, as we believe the Claimant would have appreciated.

18 Thirdly, and as already noted, Mr Trayner was given ten days within which to reply in order to prevent the letter being sent to the various recipients, which would obviously have at least a potentially damaging impact on the Respondent undertaking. The clear and obvious inference from the combined documents sent to Mr Trayner was that, if the Claimant's demands about his pay and grading were met, then the draft letter would not be sent. The Claimant himself accepted during the course of his evidence that his email to Mr Trayner and the attached draft letter would be understood by the Respondent as amounting to a threat; and it is clear from the evidence we heard from all the Respondent's witnesses that that was indeed the case, particularly since their reasonable requests to be shown the documentary evidence which allegedly substantiated the Claimant's allegations, and which he said was in his possession, were refused, and no satisfactory explanation for its non-disclosure was provided.

19 We find that the reason why the Respondent dismissed the Claimant was because of the unsubstantiated and unsupported threats contained in the Claimant's email to Mr Trayner of 2 March 2018 combined with the attached draft letter, which they (perfectly reasonably, in our view) considered amounted to an irreparable breach of trust in their relationship with the Claimant. That conclusion is supported by all the contemporaneous documentation in the agreed bundle, including the minutes of the fact-finding, disciplinary, and appeal hearings that took place, the accuracy of which was not challenged, as well as the outcome letters from the disciplinary and appeal hearings. We accept the evidence of Messrs Faichney, Corbin and McKeown that their reason for dismissing the Claimant was the collapse of their trust in him as an employee, particularly in the context of the relatively

independent role which he undertook as a bus driver, in the light of what they perceived to be his attempts to more or less blackmail or coerce the Respondent, and that the Claimant's dismissal had nothing to do with the alleged but unsubstantiated concerns which were set out in his draft letter. Accordingly, the Claimant's complaint of unfair dismissal for making a protected disclosure fails and must be dismissed for these reasons as well.

**Employment Judge Barrowclough**
**Date: 19 March 2020**