Case No: 3333321/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr C Hawkins	v	Travis Perkins Trading Company Limited

Heard at: Norwich **On:** 2 and 3 March 2020

Before: Employment Judge Postle

Members: Ms J Schiebler and Mr D Hart

Appearances:
For the Claimant: In person.
For the Respondent: Mrs Dawson, Solicitor.

JUDGMENT

1. The claimant was not unfairly dismissed under s.100 of the Employment Rights Act 1996 for raising Health and Safety issues.

2. The claimant was not unfairly dismissed under s.103A for making protected disclosures.

REASONS

1. The claimant brings claims to the Tribunal under two heads, one that he was automatically unfairly dismissed for making public interest disclosures commonly known as whistleblowing, and secondly, that he was unfairly dismissed automatically for raising matters of health and safety pursuant to s.100 of the Employment Rights Act 1996.

2. In this Tribunal we have heard evidence from Mr Harris, the branch manager; Mr Cullen the assistant branch manager; Mr Mather, transport risk assessor and Mr Clark, the regional director all giving their evidence through prepared witness statements. The claimant gave evidence through a prepared witness statement and there was a further witness statement on behalf of the claimant from a Mr Sirdar an employee of the respondent who was unable to attend the Tribunal.

3. The specifics of each of the claimant's alleged qualifying protected disclosures are set out in the case management hearing on 13 December 2018 at pages 34 to 45 of the respondent's bundle particularly relying upon s.43B(b) and s.43B(d), together with the claims arising from Health and Safety issues particularly relying on s.44(1)(c).

4. In this Tribunal we have also had the benefit of two bundles, one from the respondent consisting of 416 pages, and one from the claimant consisting of 534 pages.

5. The claimant had wished to show a video of what purported to be evidence of drivers at the respondent breaking health and safety rules, those we understand all post-dated the claimant's employment by some considerable time and the Tribunal were not of the view that such a video would assist the Tribunal in determining the issues that were before us in relation to the claimant. The video was therefore not shown.

Findings of Fact

6. The facts of this case show that the claimant was employed by the respondent as a driver from 12 December 2016 until 15 May 2018 when he was dismissed for conduct related matters.

7. The respondent clearly takes health and safety seriously in that each employee is issued with a 'Golden Rule Book' at the commencement of their employment. That book the Tribunal has seen was signed by the claimant and said to have been read by the claimant. The book is at pages 49-77 of the respondent's bundle in which there are clear rules and guidelines which set out the sort of responsibilities of what is expected of drivers and in fact all employees within the respondent. Are few examples are:

> "Never get onto the bed of a vehicle without a compelling reason (page 65).
>
> There is a 2-metre extension zone from forklift trucks (page 57).
>
> Never operate a crane where there are overhead power cables (page 70)."

8. The drivers also have the ultimate responsibility and decision over the loads, driving and whether to deliver or not to premises. The respondent also has a safety committee which meets each month and minutes of those meetings are displayed outside the manager's office and in the warehouse. All staff and drivers can attend and raise any health and safety issues and there is evidence of drivers attending such meetings. It is the claimant's evidence that he was not aware of any such committee or meetings that took place regarding health and safety despite clear evidence to the contrary.

9. The claimant was provided at the outset of his employment with training and went on to undertake a forklift truck drivers course which apparently was paid for by the respondent and the claimant passed that course and which enabled him to drive forklift trucks and therefore load his own vehicle as appropriate.

10. On 24 April 2017 the claimant sent a text to the regional director, Mr Clark simply saying his lorry was over loaded by weight, more than was legally allowed. What appears to be the case is the sales department produce tickets which will show for example 20 tons of bricks is the full order. Clearly that is not intended to be loaded on a lorry for one delivery if it is in excess of the maximum weight that, that lorry can take. So, deliveries would be split, that apparently was explained to the claimant and he appears to have misunderstood the situation. Even on the day in question, if it was originally overloaded the lorry, it would have been rectified because the claimant says he went out on delivery with the lorry at the correct weight. In those circumstances, clearly there was no health and safety issue or a breach of any legal obligation, and the claimant had received a response from Mr Clark saying, have you spoken to Adrian (with reference to the branch manager) about this. The manager would speak in turn to the management team and reminding the claimant as the driver of the vehicle he has the final say before leaving the yard. He would also speak to David Mather to see what support could be given to the claimant in his role. There clearly was no breach of any health and safety, and there was no breach of any legal obligation. The vehicle was driven with the correct loaded weight.

11. On the same day as the Tribunal understands it, being 24 April 2017, the claimant says he was asked to deliver goods to an address where power cables were overhead. The claimant says that he had seen at the address, goods had been delivered by someone from the respondent. The claimant could not confirm how the delivery took place and there was no detail as to that delivery. It could have been delivered without the use of the crane on the lorry and therefore there would be no danger to the person making the delivery with power cables above. It apparently could also have been unloaded well away from the power cables away from the premises.

12. Furthermore, the claimant did not deliver at this address in any event as it was his decision as the driver whether to deliver or not if he felt it was unsafe. There was no comeback against the claimant for this decision and in those circumstances clearly there is no breach of any legal obligation and there is no health and safety breach or issue.

13. The claimant as far as the Tribunal are aware never reports this formally to any committee, health and safety or otherwise although the claimant maintains he was unware of such committee throughout his employment despite clearly regular meetings taking place certainly on a monthly basis and notice of them outside the manager's office and in the warehouse.

14. On 16 November 2017 the claimant noticed the amber warning light had come on in his transit van, this is in relation to the braking systems, he informed Richard Secker and Neil Cullen, the garage where the respondent has their vehicles maintained was phoned by both of them who were informed by the garage it was safe to drive the vehicle to the garage. New brake pads were fitted to the van, clearly in those circumstances there is no health and safety issue or breach of any legal obligation. The claimant was not asked to drive a vehicle in an unsafe condition.

15. The claimant had originally advanced a claim under health and safety that he had asked management for assistance from colleagues loading his vehicles, the only reference to this in the claimant's witness statement is an incident in April 2018 where the respondent had received an emergency order for five railway sleepers. The claimant wanted an employee to come with him in the van to unload them, the respondent's Mr Cullen checked with the customer that there would be someone on site who could help the claimant unload the sleepers, that is what in fact happened. Mr Cullen checked with the claimant on his return that he had received assistance in unloading the sleepers and was informed it was fine. In those circumstances there clearly is no health and safety breach which was harmful to the claimant's health.

16. On 26 April 2018 the claimant reports a potential health and safety risk in that he asked for extra crawler boards for his lorry. What is clear is that at that time he did not need them and he was using the transit van in any event and was also on light duties. It is difficult to see where there is a health and safety issue in those circumstances or indeed if it is advanced as a breach of any legal obligation.

17. On 26 April 2018 the claimant told Mr Clark that he had seen employees, he gave no names and no dates, walking on the flatbeds of their lorries with no hard hats and in circumstances where the crane was lifted above them. This clearly in those circumstances with the lack of information and names makes it difficult for a company to investigate given a complete lack of factual evidence supporting the allegations and in any event at this time if this information was communicated to Mr Clark by his mobile phone there is evidence that he was having difficulties with his mobile phone at the time which is evidenced by documents R169-170.

18. In the meantime, colleagues were threatening to resign, they were being frustrated by the actions of the claimant, they found him difficult to work with, in particular on one occasion when the managing director was due to attend the premises in May the employees had spent some considerable time and effort in sweeping up the yard and tidying it up in preparation for the managing director's visit. The claimant apparently returned in his vehicle and decided that it would be a good idea in front of some of his colleagues to dump rubbish from his vehicle over the recently swept up yard smiling as he did so. He then refused a reasonable management instruction to sweep up the mess at the time which he failed to do until the following morning. Jason the yard manager complained, "I tried different approaches, I cannot work with him anymore".

19. In the meantime, the claimant had made one customer particularly angry over the delivery of timber by throwing it on the grass causing damage to the products (page 125), another incident was the claimant hitting and scratching the wing mirror of an individual's car and failing to stop and report it (page 143). On another occasion the claimant upset another branch manager when he was sent to collect some shrink wrap and was advised by that branch manager quite reasonably that they did not have sufficient for themselves. The claimant threatened to report him to the regional director words to the effect of "What do you think he would think?" and that is clearly unhelpful between colleagues, the manager had reasonably explained that they did not have sufficient for themselves. Ultimately the claimant's

behaviour was such that the manager asked his assistant manager to remove the claimant out of the branch.

20. On 19 April (page 166) Mr Cullen emailing his manager, Mr Harris in which he says:

> "Adrian I'm making a complaint about Charlie. I cannot keep pushing him and keeping him on every load his is to take out as this is taking up too much of my time and then when he leaves the yard he is always back late with little excuse that does not make sense to me. This is causing me too much work to put right when he runs late. I have two other drivers that pick up that load, their own loads and manage their lunch breaks. I do not need to micro manage them also they complete more loads and deliveries each day.
>
> Neil Cullen, Branch Manager."

21. There was also a further incident involving a valuable customer and the respondent philosophy which is not surprisingly 'the customer always comes first', he apparently needed some help loading some work tops and the claimant was asked, he refused to assist the customer and that could have resulted in the loss of a very valuable customer to the business.

22. It was therefore decided on 9 May after feedback from messers Harris, Cullen and Jason the yard manager that the claimant employment could no longer be tolerated by the respondent, his conduct and the ill-feeling towards the other employees was such that his employment could no longer continue and that he would dismissed with 4-weeks' pay in lieu of notice. Although the letter of dismissal does not offer an appeal, an appeal was subsequently offered to the claimant who chose ultimately not to engage in the appeal process for reasons best known to the claimant.

Conclusion

23. It is therefore not surprising given the Tribunal's findings that it is patently clear that the claimant's dismissal had absolutely nothing to do with or was in any was connected to the claimant making alleged public interest disclosures, if indeed they do meet the definition of a public interest disclosure and they certainly are not related in any way to his dismissal to raising matters which the claimant believed were real issues of health and safety matters. For all those reasons the claims that the claimant brings under the Employment Rights Act 1996 for automatic unfair dismissal under s.100 and s.103A are dismissed.

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Employment Judge Postle

Date: …16 April 2020

Judgment sent to the parties on

... 2 June 2020.....

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For the Tribunal office