



# EMPLOYMENT TRIBUNALS

**Claimant:** LAYLA SADDIQUE

**Respondent:** BRISTOL STREET FOURTH INVESTMENTS LIMITED

**Heard at:** Watford -by CVP **On: 26 & 27 October 2020**

**Before:** Employment Judge Skehan  
Ms Gibson  
Mr Kapur

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr A Henderson, Counsel

## RESERVED JUDGMENT

1. The claimant's claims for unlawful detriment and automatically unfair dismissal contrary to S47B and 103A of the Employment Rights Act 1996 are unsuccessful and dismissed.
2. The claimant's claim for a breach of contract is successful. The claimant was entitled to one month's contractual notice on the termination of her employment on 03/05/2019.

## REASONS

1. This was a remote which was not objected to by the parties. The form of remote hearing was video. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 111 pages, the contents of which I have referred to below. The order made is described within the reserved judgment set out above.
2. At the commencement of the hearing we revisited the list of issues set out in writing by EJ Hawksworth following the preliminary hearing of

13/03/2020. On reading the parties witness statements, it appeared to the tribunal that the dates may have become confused within the original list and it was agreed with the parties that the tribunal would treat any reference to meetings on 23/04/2019 as references to meetings on 10/04/2019 and/or 23/04/2019.

### **The Facts**

3. We heard from the claimant on her own behalf. We heard from Mr Bell, the general manager of the Oxford dealership, Mr Sturt, the claimant's line manager and Ms Lightowler, a respondent HR adviser, on behalf of the respondent. All witnesses gave evidence under oath or affirmation. All witness statements were adopted and accepted as evidence-in-chief. All witnesses were cross-examined. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which we heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
4. The respondent is engaged in the retail sale, maintenance and repair of motor vehicles. The claimant commenced employment with the respondent on 22/10/2018 as a 'warranty administrator' at the respondent's Peugeot dealership. The claimant was required to process warranty claims as part of her duties. On occasion, a manufacturer would request the return of the faulty part giving rise to the warrant claim prior to processing a warranty claim made by the respondent. It is common ground between the parties that on several occasions prior to April 2019, the claimant could not locate the requested parts for warranty claims. The claimant reported these claims and missing parts to her line manager, Mr Sturt, who took the invoices away from the claimant and told the claimant that he would deal with the requests. At the time, the claimant considered the process to be flawed but had no reason to suspect that there was anything suspicious/ illegal or improper with this process.
5. Mr Sturt says that he was supportive of the claimant during her employment. In February 2019 he agreed on an informal basis that the claimant could start an hour late each morning. In March 2019 he spoke to the claimant explaining that the position would need to be formalised. Mr Sturt explained to the claimant that the claimant could make up hours on a Saturday or just be paid for the hours that she worked during the week. Mr Sturt says that the claimant was angry with this position and swore at him saying that the respondent did not pay the claimant enough as it was. The claimant thereafter requested a pay rise however Mr Sturt told her that he was not in a position to give a pay rise. Mr Sturt said that the claimant's attitude took a downturn from this point onwards.
6. We were referred to an email of 09/04/2019 from Mr Sturt to the claimant and 2 other colleagues, copied to Mr Bell. This email highlighted errors,

described by Mr Sturt within the email as incompetence, made by the claimant and her colleagues. This email attached various spreadsheets with information including errors said to be made by the claimant.

7. Following receipt of this email from Mr Sturt, the claimant had a meeting with Mr Bell on around 10/04/2019 as set out below. The claimant's oral evidence in relation to what was said and done at the meeting of 10/04/2019 and 23/04/2019 was confused. During the process of cross examination the claimant told the tribunal that she could not remember what was said or when it may have been said. The claimant sent a long letter to the respondent's HR team on 24/04/2019 (the grievance letter). This letter consists of 6 pages of small type. The tribunal considered this letter, being close in time to the meetings in question, more likely to be an accurate reflection of events where there is any discrepancy with the claimant's evidence provided at a later stage.
8. The claimant identified two separate matters relating to warranties during her employment:
  - 8.1 The processing of warranty claims in general terms as set out above; and
  - 8.2 The 'fake claim' issue. Prior to the claimant's holiday in April 2019, in line with usual policy the manufacturer requested a part to be returned before payment was made under a warranty claim. The claimant could not locate the required part and reported the matter to Mr Sturt. Mr Sturt told the claimant to leave it with him and he would deal with it. This element was part of the claimant's general complaint about how warranty claims were dealt. However, in this particular case, some time later, the claimant discovered from her colleague Caron that this particular job was never completed and the paperwork wrongly referred to the registration number of Mr Sturt's company car. On learning this information, the claimant considered this to be a fraudulent claim. Ms Lightowler told the tribunal that the 'company car' issue was a fraudulent claim that the respondent did not condone. This matter is referred to within this judgment as the 'fake claim'.
9. The claimant's witness statement states inter-alia that 'prior to my holiday in April 2019 I have a meeting with [Mr Bell] . During this meeting I raised several concerns; these are all detailed in my letter to HR.....written as 'serious concern'.. Over warranty invoices been claimed before work is carried out, this was done by Jane and Andy. I also mentioned one particular job involving [Mr Sturt's] vehicle... Mr Bell was the general manager and I confided in him....'. The claimant's written evidence was that she raised both the processing of warranties in general terms and the 'fake claim' with Mr Bell in their conversation of 10/04/2019. The respondent denies that the claimant raised the issue of the fake claim at any time with Mr Bell or Mr Sturt during the course of her employment.
10. We note that the claimant's grievance letter states, '....It later comes to my attention from Caron that the registration of the vehicle in question is [Mr Sturt's] personal car... this job was never done, there is no part...This

whole claim was brushed under the carpet by [Mr Sturt and Mr Bell]....'. The claimant told the tribunal that she learned of the 'fake claim' issue 'later', from her colleague, after her discussion with Mr Bell on 10/04/2019. We heard from Mr Bell who says that the claimant came to his office on around 10/04/2019 following receipt of Mr Sturt's email outlining errors as set out above, to complain about the email and various other matters. Mr Bell's evidence was that the claimant appeared irritated and annoyed and was of the opinion that she had been criticised unfairly. It is common ground between the parties that the claimant complained about a number of other matters, detailed in her grievance letter, during this meeting however the tribunal limits its consideration to matters said to form 'a protected disclosure' or those relating to the claimant's alleged resignation.

11. Mr Bell told the tribunal that at no point did the claimant mention any alleged fraudulent warranty claim. Mr Bell says that he did not learn about the 'fake claim issue' as referred to above until after the termination of the claimant's employment. The tribunal finds on the balance of probability that the claimant raised general warranty procedural issues with Mr Bell however, as of that meeting the claimant did not suspect that the general warranty procedural issues that she has raised were in any way linked to any fraudulent and/or criminal activity. The claimant was not aware of the 'fake claim issue' and did not discuss this with Mr Bell, contrary to what is said by the claimant in her statement.
12. It is common ground between the parties that the claimant discussed her pay with Mr Bell. The claimant told Mr Bell during the course of their discussions on 10/04/2019 that '.... If you are only talking about money, then maybe you should get someone to work harder for you for less money because I am not a monkey and I refuse to work for peanuts, Mr Bell says, and the claimant denies, that the claimant also said, 'I quit'. Mr Bell says that he told the claimant that he accepted her resignation, but she would need to give her resignation in writing to Mr Sturt. Mr Sturt says that the claimant came out of Mr Bell's office and went straight to his office. She told Mr Sturt that 'I've handed in my notice... I'm leaving'. She told the Mr Bell that she only needed to give one weeks' notice and she would like to go on holiday as planned and work out a week's notice when she returned. Mr Sturt says that he told the claimant that if she changed her mind for any reason, she must tell Mr Bell before going on holiday as otherwise the respondent would be looking for a replacement while she was on holiday. Mr Sturt says that the claimant agreed to help train her replacement. The claimant denies that this exchange happened with Mr Sturt and denies that she verbally resigned at all. The claimant told us that she had a discussion with Mr Sturt following her discussion with Mr Bell where ' I told him that I was still upset and confused after my conversation with [Mr Bell ]. [Mr Sturt] advised to take a few days to let things cool down and that we all say things in haste that we don't mean. He also advised to contact him and let him know of my decision..... I did not call [Mr Sturt] to confirm anything.....'
13. Mr Sturt told us that following his discussion with the claimant he was told by his colleague Caron that the claimant had resigned and was 'telling

everyone'. Mr Sturt was told by a different colleague that the claimant was 'on the war path, storming around the dealership telling all the staff that she was leaving and saying 'get out while you can you can get paid more elsewhere''. Mr Sturt was annoyed by the claimant's behaviour he felt it was unprofessional and verging on gross misconduct. Mr Sturt and Mr Bell discussed a replacement for the claimant and identified a potential applicant.

14. The claimant went on holiday from 12/04/2019 until 23/04/2019. The claimant says that 'Upon my return to work on Tuesday 23 April.... Caron ...asked me if I have handed in my resignation.... Throughout the day Tuesday, 23/04/2019 several of my colleagues asked when I was leaving, yet again I found that intrusive as I have not yet officially resigned..... The tribunal finds on the balance of probability considering the entirety of the evidence and the claimant's behaviour, that the claimant verbally resigned in clear terms during her meeting with Mr Bell on 10/04/2019 using the words 'I quit'. The claimant had the exchange with Mr Sturt thereafter as set out by Mr Sturt. The claimant also told her colleagues that she had resigned prior to her holiday. The claimant had not put her resignation in writing.
15. On her return from holiday, the claimant received an email from Mr Sturt asking for her to put her resignation in writing. The claimant then saw Mr Sturt passing in the hallway and asked if she could speak with him privately. The claimant told Mr Sturt that she was happy in her job and she was performing very well in her job. The claimant did not want to resign. Mr Sturt told the claimant that he and Mr Bell had already accepted her verbal communication as a resignation and they were expecting her to leave the business on Friday, 23/04/2019. The claimant became very upset and was in tears. Mr Sturt told the claimant that Mr Bell also needed to be present at this meeting and thereafter Mr Bell joined their meeting. The claimant says that Mr Sturt told her that if she wanted a career in the industry Mr Sturt would provide a good reference if the claimant left on good terms. The claimant took this to be an indirect threat. The claimant told both managers that she felt bullied by them. The claimant asked if she could have more time allowing her to make a decision. The claimant alleges that Mr Bell replied that the claimant could 'F\*\*k off on Friday' or he was happy for the claimant to stay an extra week if she could stay and train the new starter taking over her position. The claimant was very upset. Mr Bell said, 'let's call it a day, you can go home.'
16. At no time does the claimant allege that there was any discussion on 23/04/2019 between her and Mr Sturt and/or Mr Bell relating to either warranty procedural issues or the 'fake claim'. The claimant sent a grievance letter to the respondent's HR department on 24/06/2019. The claimant did not send this document to or discuss it in any way with Mr Bell and/or Mr Sturt. Both Mr Bell and Mr Sturt told the tribunal that they were not aware of the existence or content of claimant's grievance prior to the termination of the claimant's employment. Ms Lightowler told the tribunal that the HR department did not inform either Mr Bell or Mr Sturt of the claimant's grievance prior to the termination of the claimant's employment.

17. The claimant was absent from work on sick leave from 24/04/2019 until her dismissal on 13/05/2019. The claimant's probationary period was due for review in April 2019. Mr Sturt said that he had considered that the claimant's performance and attitude to be poor and, before her resignation, he was planning to extend the claimant's probation for a further few months to give her a chance to improve. The claimant's probationary period expired on 22/04/2019. Mr Sturt said that due to her holiday, her review was delayed and he intended to conduct a review at the end of April when the claimant returned from holiday. The matter had become confused with the claimant's resignation. It was clear to Mr Sturt following their discussion on 23/04/2019 that the claimant had changed her mind about resigning. Mr Sturt took advice from his HR team. The claimant's employment continued and Mr Sturt proceeded with the probationary review. The claimant was sent a letter inviting her to a probationary review that was rescheduled for 01/05/2019. The claimant was off sick during this time and the probationary meeting was held in the claimant's absence. Mr Bell and Mr Sturt met to discuss the claimant's performance. They noted issues of: poor timekeeping, performance at work and poor attitude. Although Mr Sturt had previously considered extending the claimant's probationary period, he considered the claimant's attitude displayed on 10/04/2019 and concluded it was no longer appropriate to give her a chance to improve. The claimant did not meet the respondent's expected standards in terms of performance and conduct and she displayed a lack of good work ethic and commitment to the business. The claimant was informed of Mr Sturt's decision on 03/05/2019. The claimant was paid one week in lieu of her notice.
18. Mr Sturt told the employment tribunal that he was not aware of the claimant's grievance until following the termination of her employment. Mr Sturt said that when the claimant had originally passed him the invoices relating to the 'fake claim' he recognised his own company car details. He had not been aware of this attempted fraud prior to that point and was not in any way involved in it. He had considered that as the warranty claim was never processed and claim had not been paid, no actual fraud had been committed. He dealt with the employees responsible for the paperwork informally. Following the termination of the claimant's employment, the respondent carried out an investigation into the fake claim issue. This was triggered by the claimant's grievance. Mr Sturt was cleared of any wrongdoing. The employees responsible for the 'fake claim' were at that later point issued with formal disciplinary 'letters of concern'.
19. We were referred to the claimant's contract dated 12/10/2018. This provided the following clause in relation to notice:

If you wish to terminate your employment with the company you must give at least one month or, for colleagues with less than 6 months' service, one week's prior written notice. If the company wishes to terminate your employment the period of notice you are entitled to receive depends upon your continuous period of employment, however, the minimum period after 6 months service is one month (see the colleague handbook for full details).

20. We were not provided with the 'colleague handbook' nor referred to any relevant provision therein. We were told by Mr Bell that once the claimant had 6 months service she was entitled to a months' notice in accordance with her contract.

### **The Law, Deliberations & Findings**

21. Employees who make protected disclosures have the right not to suffer a detriment or be dismissed as a result. The relevant legislation is found within section 47B of the Employment Rights Act 1996 (ERA) relating to detriment and section 103A ERA relating to dismissal. To gain protection under the legislation protected disclosure must be 'a disclosure of information', a 'qualifying' disclosure and made in accordance with one of the specified methods of disclosure is set out within the legislation. The definition of a 'qualifying' disclosure is contained within section 43B ERA. We have considered the entirety of the evidence available to us alongside the oral submissions very carefully. We organise our deliberations in the order of the list of issues agreed by the parties at the commencement of the hearing that reflect the statutory provisions set out above.

*Did the claimant have a conversation with Mr Bell on the morning of 23/04/2019 and/or 10/04/2019 in which she said that she believed that fake warranty claims were being processed.*

22. We have found that the claimant had a conversation with Mr Bell on the morning of 10/04/2019. The claimant raised the issue relating to the processing of warranty claims in general. At this time the claimant did not suspect that any issue relating to how the respondent processed warranty claims was or might be fraudulent or unlawful. We have found that the claimant was unaware of the fake warranty matter at this time. At no time during the meeting of 10/04/2019 did the claimant raise any issue with Mr Bell in relation to any fake warranty claims as alleged.
23. For the sake of completeness we note that the claimant also had a discussion with Mr Sturt on 10/04/2019 following her discussion with Mr Bell. At no time during this discussion did the claimant raise any issue or make any comment in relation to the processing of warranty claims or any fake warranty claim.
24. The claimant learned of issues relating to Mr Sturt's car and the fake claim following her discussions with Mr Bell and Mr Sturt on 10/04/2019. This discovery led the claimant to question the respondent's previous processing of warranty claims and conclude that fake warranty claims were being processed and suspect that a criminal offence had been committed, was being committed or was likely to be committed. At no time prior to the termination of her employment did the claimant share this information with Mr Bell and/or Mr Sturt.
25. The claimant had a conversation with Mr Sturt alone initially and thereafter Mr Bell and Mr Sturt together on 23/04/2019. At no time during this discussion did the claimant raise any issue or make any comment in relation to the processing of warranty claims in general or any fake warranty claim. At no time prior to the termination of her employment was

either Mr Bell or Mr Sturt aware of the claimant's concerns in relation to fake invoices or her written grievance.

26. For the sake of completeness, although not identified within the list of issues, we note that it is possible that the claimant's grievance of 24/04/2019 constitutes a protected disclosure as defined within section 43B ERA. However, we have found on the balance of probability that neither Mr Sturt nor Mr Bell were aware of this grievance prior to the termination of the claimant's employment. We have found that the decision made to terminate the claimant's employment was that of Mr Sturt. The claimant's grievance played no part whatsoever either directly or indirectly in either the claimant's dismissal or any treatment of the claimant prior to her dismissal.
27. In light of our findings above, we conclude that the claimant has not made a protected disclosure either on 10/04/2019 or 23/04/2019. As the claimant has not made a protected disclosure as alleged, this cannot have tainted her subsequent treatment or dismissal and her claim must fail and we do not consider the remainder of the list of issues relating to the claimant's whistleblowing claim.
28. We note that the claimant has raised issues of fairness relating to allegations of poor performance and disputes the performance issues raised by the respondent. The fairness, in general terms, of the claimant's dismissal in the absence of any 'whistleblowing' element is not a question within this litigation for this tribunal to address. The claimant has less than 2 years' service and there is no 'ordinary' unfair dismissal claim.

*Did the respondent: call the claimant into a meeting with Mr Bell and Mr Sturt on the afternoon of 23/04/2019 and ask her to resign; threaten and harass the claimant during the meeting on the afternoon of 23/04/2019, telling her to pick up her bag and leave, swearing at her and telling her that she would not work in the industry again; hold a sham probationary review on 01/05/2019. If so, were these 'detriments'? If so, with any detriment done on the grounds that the claimant made a protected disclosure?*

29. The claimant was not called into a meeting with Mr Bell and Mr Sturt alleged on 23/04/2019. The claimant requested the meeting with Mr Sturt and during this meeting Mr Bell's presence was requested by Mr Sturt. The claimant was requested to put the resignation she had previously given to Mr Bell on 10/04/2019 in writing. The claimant was not asked to resign during this meeting. The claimant was very upset prior to and during the meeting of 23/04/2019. We have not found any facts that would constitute threatening or harassing behaviour on the part of Mr Sturt and/or Mr Bell. For the reasons set out above, the claimant has not made a protected disclosure to Mr Bell and/or Mr Sturt, and the treatment of the claimant, even if it could be considered 'a detriment' was not done on the grounds of nor was it in any way connected to the making of a protected disclosure on the claimant's part.



*Did the claimant resign on about 10/04/2019? Was the claimant dismissed by the respondent on 03/05/2019?*

30. We have found that the claimant resigned during her discussion with Mr Bell on 10/04/2019. We were referred to the case of *Willoughby V CF Capital plc [2012] ICR 1038* in relation to the arguments surrounding the claimant's resignation. Mr Sturt acknowledged that the claimant wished to withdraw her resignation following her return from holiday. Mr Sturt rightly considered the position to be confused. The respondent elected to allow the claimant's employment to continue and to undertake a review of the claimant's probationary period. In the circumstances we conclude that the respondent by its actions demonstrated its consent to the claimant's obvious wish to withdraw her resignation. Had this consent not been provided, there would be no logic to the respondent conducting the review and terminating the claimant's employment. We do not criticize the respondent for taking this approach as it appears to be a sensible one in the circumstances. We find that the claimant's employment continued until it was terminated by the respondent on 03/05/2019.

*Did the respondent dismiss the claimant in breach of her entitlement to notice?*

31. We have found that the claimant resigned on 10/04/2019, however her resignation was withdrawn with the respondent's consent and her employment continued. The claimant's employment was terminated by the respondent on 03/05/2019. As the claimant commenced employment on 22/10/2018, the claimant had in excess of 6 months service with the respondent at the date of her dismissal. The grounds of resistance note correctly at paragraph 3 that 'the claimant had just over 6 month service when her employment terminated.' The express provision within the claimant's contract states '*...If the company wishes to terminate your employment the period of notice you are entitled to receive depends upon your continuous period of employment, however, the minimum period after 6 months service is one month..*'. While, the continuation of the claimant's employment beyond her initial resignation and initial probationary period may have been the result of a mixture of good practice on the respondent's part, delay due to the claimant's holiday absence and general delay in conducting the claimant's probationary review, we do not consider that this modifies the contractual notice provisions within the contract. The contractual position was confirmed by Mr Bell within his evidence. The claimant was employed for in excess of 6 months and was entitled to one month's notice on the termination of her employment on 03/05/2019.
44. For the reasons set out above the claimant's claim:
- 44.1 relating to automatically unfair dismissal and detriment relating to whistleblowing under the provisions of the ERA are unsuccessful and dismissed.
- 44.2 for are wrongful dismissal is successful. The claimant was entitled to one month's notice from 03/05/2019. The tribunal dealt with issues of liability only during the hearing. While this matter has

been listed for a remedy hearing, it is hoped that the parties will be able to agree appropriate remedy in this matter without recourse to the tribunal.

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Employment Judge Skehan

Date: 8 November 2020.  
Sent to the parties on: 19 November 2020.

For the Tribunals Office  
T Henry-Yeo