



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Jackson

**Respondent:** Eames Partnership Ltd

**Heard at:** London Central

**On:** 30 November, 1, 2, 3  
& 4 December 2020

**Before:** Employment Judge Grewal  
Ms L Jones and Mr D Kendall

## **Representation**

Claimant: In person

Respondent: Mr Islam-Choudhury, Counsel

**JUDGMENT** having been sent to the parties on 4 December 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

1 In a claim form presented on 21 June 2019 the Claimant complained of having been subjected to detriments for having made protected disclosures and unfair dismissal under section 103A of the Employment Rights Act 1996.

## **The Issues**

2 It was agreed at the outset of the hearing that the issues that we had to determine were as follows.

2.1 Whether the Claimant made the following disclosures:

- (a) On or about 5 March 2019 after a call with Colette Nolan (HR Director at Aon) he informed Stuart White and Matthew Eames that illegal approaches had been made by the Respondent to senior Aon employees;

- (b) In the week commencing 15 April 2019 he made a disclosure to Stuart White after seeing the Guy Carpenter talent map which showed that Aon employees had been approached for new job opportunities;
- (c) On 24 April 2019 he asked Stuart White ahead of a planned Aon meeting whether they was anything about which he should be made aware with regard to staff poaching and was told once again that no Aon approaches had been made.

2.2 If the Claimant made any of the above disclosures of information, whether they were “qualifying disclosures” under section 43B(1)(b) of the Employment Rights act 1996.

2.3 Whether the Claimant was subjected to the following detriments:

- (a) Mr White responded to the Claimant’s disclosure of 5 March 2019 by telling him to “go back to his knitting.”
- (b) Professional and reputational damage, in particular, by Mr Eames sending an email to all UK Directors explaining why he had been dismissed; and
- (c) Failing to provide a reference to Drayton Finch.

2.4 If he was, whether he was subjected to those detriments because he had made one or more protected disclosures.

2.5 Whether the sole or principal reason for the Claimant’s dismissal was that he had made protected disclosures.

### **The Law**

3 Section 43B(1)(b) of the Employment Rights Act 1996 (“ERA 1996”) provides,

“In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following

–

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.”

A qualifying disclosure made by a worker to his employer is a protected disclosure.

Section 47B(1) and (1A) ERA 1996 provide that a worker has the right not to be subjected to a detriment by any act, or any deliberate failure to act, by his employer or another worker of his employer on the ground that the worker has made a protected disclosure.

Section 103A of ERA 1996 provides,

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal

reason for the dismissal is that the employee made a protected disclosure.”

### **The Evidence**

4 [I normally set out the names of the witnesses who gave evidence but I do not have access to the Tribunal file of the case at present and cannot do so]. Having considered all the oral and documentary evidence the Tribunal made the following findings of fact.

### **Findings of Fact**

5 The Claimant commenced employment with Eames Consulting Group Ltd on 30 June 2017. Eames Consulting Group Ltd (“Eames Consulting”) is a contingency recruitment business. The Claimant was head-hunted for the role by Matthew Eames, founder of the Eames Group of companies, and the expectation was that he would grow the retained executive search business and generate high levels of revenue for that part of the business. He had a basic salary of £90,000 per annum. His title was “partner” and he reported to Matthew Eames.

6 The Claimant’s contract of employment made it clear that the disciplinary procedure was not contractual (cl 16.1) and that after completion of the probationary period either party could terminate the contract by giving three months’ notice in writing and that the Respondent could pay salary in lieu of requiring the Claimant to work his notice period (cl 10.1 – 10.3).

7 On 1 March 2019 the Claimant’s employment was transferred to Eames Partnership Ltd (“EPL”) but his Terms and Conditions remained the same. EPL was set up as a separate legal entity to carry out senior executive level retained searches. Matthew Eames was the Managing Partner and Stuart White was a Senior Partner.

8 Eames Consulting made it clear to all its employees that they were bound by the non-solicitation clauses that it had with its clients and it drew up a list of its key clients and told its employees that under no circumstances were they allowed to head-hunt from those clients.

9 One of the clients on the list was Aon. Aon has been a client of Eames for many years. Eames Consulting have had agreements in place with Aon over a number of years. The latest one was entered into on 1 March 2019. That agreement and the previous one which commenced on 29 April 2015 both contained a non-solicitation clause which provided,

*“During the course of this Agreement and for a period of 3 months after its termination the Agency [Eames Consulting] undertakes not to solicit induce or entice away any employee of Aon or its Associated Company directly or indirectly.”*

10 Both Stuart White and the Claimant were engaged in recruiting for Aon. In 2018 the Claimant achieved sales (i.e. fees for Eames) of £85,669 from Aon and Mr White achieved sales of £150,178.31.

11 Between April and June 2018 there was a dispute between Aon and Mr White about the level of fees being charged. It was resolved with the parties agreeing a reduction in the fee.

12 The Claimant was entitled to participate in the Respondent's commission scheme. From 1 January 2018 in order to qualify for commission on a quarterly basis he had to achieve sales (fees for the business) of over £61,875 a quarter. In the first quarter of 2018 he achieved sales of £68,400 and received commission of £2,610. In the second quarter he achieved sales of £99,490 and received commission of £15,046. However, in the third and fourth quarters his sales did not reach the threshold and he did not receive any commission.

13 Mr Eames had weekly one-to-one meetings with the Claimant at which he discussed his work with him and what he needed to be doing. At a meeting on 17 August 2018. Mr Eames told the Claimant that ideally he should be achieving sales of more than £400,000 in 2018 with a strong performance being closer to £500,000. He pointed out that the Claimant had completed seven searches (i.e. recruited individuals to seven roles for clients) in the first half of the year and in order to achieve the figures he had set out he needed to win ten new searches in the second half of the year. He also pointed out that although there would be repeat business from three firms, the Claimant needed to be targeting new firms and he gave him a list of ten firms on which to focus. He concluded by saying that there needed to be a significant increase in meetings with the clients on his list as there had been little progress since July. He set out the above points in an email.

14 On 13 September 2018 Mr Eames forwarded that email to the Claimant again with the comment "*a gentle reminder to keep the below on your radar.*"

15 At a one-to-one meeting at the end of October 2018 the Claimant agreed with Mr Eames that he had made little progress with the list of clients. Mr Eames told him that larger clients like the ones on the list took more time to on-board and he needed to apportion a reasonable amount of time to them and to keep plugging away at them. He also said that as the Claimant had had only nine client meetings in October and less than twenty in September he needed to focus significantly more time on business development between then and mid-December.

16 By the end of December 2018 the Claimant had achieved sales of just under £288,000, which was significantly short of the £400,000+ target that Mr Eames had set. His performance had deteriorated in the second half of the year when his sales figures had not reached the threshold to earn any commission.

17 On 21 December 2018 EPL agreed to produce a Market Intelligence Report on Property and Casualty (P&C) and Specialty lines within the London market for McGill and Partners. McGill and Partners was a new start-up founded by Steven McGill who had shortly before worked in a very senior role in AON.

18 The proposal (which was prepared by Stuart White assisted by two researchers) stated that EPL would compile a detailed insight into brokers and producers operating within the London P & C and Specialty Lines. It explained that the information was gathered through desk-based research which was then verified and enhanced through additional research with market contacts. That

process enabled them to produce high-level profiles of the individuals working in those roles. They set out in the proposal the organisations which they would target. It was stated in the agreed proposal “*For the purposes of this assignment, Aon will be off-limits to both parties.*”

19 On 28 January 2019 Mr Eames sent the Claimant and Mr White an email in which he set out in detail what he wanted them to do in order to get more business. He listed over twenty clients and detailed in respect of each client who needed to contact the client, by when and what other actions each of them needed to take.

20 On 1 February 2019 Mr Eames told the Claimant to work through the list he had sent on 28 January as his primary focus and reminded him that it was imperative to make progress against those tasks.

21 On 4 February he asked the Claimant for an update on the list of actions in his email of 28 January. He asked him to print the email with his update on each of his specific actions and to leave it on his desk.

22 On 6 February **320** Mr Eames reminded the Claimant that his objectives at that stage were centred around business development to ensure that he had built his mandate pipeline (i.e. clients who would retain him to fill positions). He also provided the Claimant with the name of someone working for Eames Consulting and suggested that the Claimant contact him as he had lists and contacts that he might be able to share with the Claimant.

23 On 7 February 2019 the Respondent’s billing department chased Insure the Box for payment of an invoice that had been sent in October 2018 and remained unpaid. The invoice was for a cancellation fee. Andy Preacher from Insure the Box responded that he did not think any such fee was payable. He said that the Claimant had been asked numerous times to confirm what the commercial impact would be of changing from a permanent recruitment to one of a fixed-term or contract nature and that he had not done so. He said that the search had only been cancelled because they had had no contact from the Claimant, despite numerous attempts on their part to contact him and that he had not confirmed the costs of changing tack. Mr Eames told the Claimant to deal with it and to keep him updated.

24 On 13 February 2019 Joel Westley, a researcher, prepared a shortlist Market Intelligence Report for a client, Guy Carpenter. That report listed 35 individuals working in different roles and gave their profiles. Ten of them were people working for Aon Benfield.

25 On 20 February Mr Eames sent the Claimant an email in which he asked him to continue to work through the actions that he had set out in his email of 28 January and to carry out certain additional actions. The purpose of all the actions was to develop the business. He also asked the Claimant to update him on the Swiss Re searches (as they were claiming that they did not have to pay cancellation fees) and for an update on Insure the Box.

26 On 25 February Mr Eames informed the Claimant that there also appeared to be an issue with the amount that had been invoiced to Aon in respect of someone whom the Claimant had placed in a role with them. He asked the

Claimant to update him on that and all the other issues that he had raised at a meeting that they were due to have the following week.

27 On 27 February the Claimant sent Mr Eames an email in which he set out the actions that he intended to carry out to maximise his Business Development effectiveness. He did not give any timescales for the when the actions would be done. He noted that as he had a target of £400,000+ he needed to achieve about £100,000 for the First Quarter. Mr Eames added in capital letters his comments to what the Claimant had written. In most cases he provided timescales within which the actions had to be carried out. Most of them were either ASAP or by the end of March.

28 On 5 March 2019 the Claimant had a meeting by WebbEx call with Colette Nolan, UK HR Director for Aon. It is his case that after that call he made protected disclosures to Stuart White and Matthew Eames. They deny that he did. In determining what happened on that day we took into account the following matters. Many of these apply equally to the other alleged protected disclosures.

#### Consistency of the Claimant's accounts

29 In his claim form on 21 June 2019 the Claimant said that McGill and Partners became a client of the Respondent in December 2018 and that although he had been responsible for placing the COO he had thereafter been excluded and all the follow-up work had been handed to Stuart White. He then went on to say,

*“When I did finally get sight of who he was targeting I was shocked to see that there were a number of high-profile senior individuals, whom he was looking to poach, were currently being employed by one of my major clients (Aon UK Ltd) where hands off rules were in place. Upon discovery, I told both Stuart White and Matthew Eames that were in breach of our clients’ contracts [sic]. I was told to be quiet and that they wouldn’t be approached.”*

30 At the Preliminary Hearing on 22 November 2019 he was ordered to provide “full particulars of the dates, subject matter, form and people to whom all the alleged protected disclosures were made” In further particulars provided on 11 December 2019 he referred to the WebbEx call with Colette Nolan and then said,

*“After the WebbEX call with Colette Nolan, it was drawn to my attention that there were concerns that Eames Partnership had been in contact with key Aon executives with the intention of presenting new job opportunities (McGill & Partners). I told Matthew Eames and Stuart White after the call that I had been informed by Aon that illegal approaches to senior Aon staff had ben made by Eames Partnership but when I told them both directly I was told that I should not be concerned and “go back to my knitting.”*

He did not say anything in the further particulars about the Respondent trying to move Karl Hennessy to McGill.

31 In his cross-examination of Stuart White the Claimant put to him that he had heard Mr White talking to Karl Hennessy about McGill. Mr White accepted that McGill might have been mentioned in conversation he had with Hennessy but denied that he had had had any conversation with him about him moving to

McGill or that he had facilitated any such move. On the Claimant's application we made an order for McGill to disclose any invoices sent to any recruiter for three individuals who had joined it. one of them was Hennessy. The response was that no invoices had bn sent to any recruiter, including Eames, for those three individuals.

32 The hearing of this case was initially listed to take place on 10 March 2020. In his witness statement for that hearing dated 28 February the Claimant gave both those accounts (paragraphs 29 and 30 above). As part of the disclosure for that hearing the Respondent produced evidence to show that Mr Eames was on a skiing holiday from 5 to 8 March 2019 and that the Claimant had not called him or communicated with him by email on that date. The hearing could not go ahead on 10 March and a preliminary hearing took place on that day. At that hearing the Claimant asked to amend what he had said about that disclosure to allege that he had made the disclosure to Mr Eames on his first day back at work from his holiday. He did not, however, amend his witness statement for this hearing.

33 When the Claimant was giving evidence I asked him what exactly had Ms Nolan said to him and he responded that she said she had concerns with the McGill start up. Aon was a natural home for McGill to target. She had reason to be concerned that Eames was active in the market on McGill's behalf and she wanted him to look into it. She wanted him "to make inquiries about what was going on."

34 In his closing submissions the Claimant said that on 5 March Ms Nolan had said that she was "increasingly concerned by rumours in the market that Eames were approaching their staff for McGill" and that he had said to Stuart White "what am I supposed to say to Colette as I'm being compromised?"

35 The Claimant's evidence at the Tribunal about making the disclosure to Mr Eames was that he had raised it with him when Mr Eames asked him whether he had signed the new contact that he received on 7 March. He said that he had expressed unhappiness about Eames Partnership operating freely and autonomously from Eames Consulting. In his cross-examination of Mr Eames he said that he had expressed unhappiness about the change because it was trying to take the Respondent away from its legal obligations with companies like Aon. On the next day he put to Mr Eames that Mr Eames had responded to his concerns by saying that it would help with Thunderbolt Project (the code name for McGill and Partners). That was the first time since this case started nearly 18 months ago that the Claimant had made that assertion.

36 There are inconsistencies in the Claimant's account on this disclosure in respect of Colette Nolan said to him, when he raised it with Mr Eames and what he said to Stuart White and Matthew Eames after that conversation.

The absence of any documentary evidence to corroborate the Claimant's account

37 There is not a single document that corroborates what the Claimant says. He did not make a note of what Ms Nolan said to him. He did not set out his concerns in any email to anyone. If these matters had been raised and he felt strongly about them and his concerns were being ignored, one would have expected him to have raised them in writing with Mr Eames or HR or Guy Day. His explanation that he did not do so because he did not want to lose his job

does not hold. The gist of his evidence was that standing up to Mr Eames had consequences. His exact words were that if people “stand up to Eames, they get shot down.” If challenging Messrs Eames and White about them breaching their legal obligations was going to have consequences, it would do so whether those challenges were made verbally or in writing. Even if that had been a deterring factor, there was nothing to stop him putting it in writing after he had been dismissed. If he had genuinely believed that that had been the reason why he had been dismissed he would have documented that at the time. The Respondent’s witnesses often set out exchanges that had taken place in emails shortly after the verbal exchange. None of those refer to the Claimant raising these matters. It is very unusual in a whistleblowing case for there to be no document at all referring to the subject matter of the protected disclosures.

No complaints from Aon

38 There was no evidence of Aon complaining to the Respondent about it poaching Aon staff for McGill. If Aon had had any evidence of it, it would not have asked Ms Nolan to ask the Claimant to make inquiries; it would have tackled Mr Eames head on. It had nothing to lose. It was the client who was paying Eames and if it felt that Eames was in breach of its contractual obligations, it would have raised that matter loudly and clearly.

39 There was no evidence before us of Eames approaching anyone who was still working for Aon to entice them to move to McGill. The Claimant had no evidence of that other than what he says Colette Nolan told him and he has given different accounts of what she told him.

40 Having considered the matter very carefully and all the surrounding evidence we concluded that the Claimant did not on 5 or 8 March tell Stuart White or Matthew Eames that he had been informed that illegal approaches had been made to senior Aon staff by Eames or that the Respondent was acting in breach of its non-solicitation clauses.

41 On 7 March 2019 the Claimant was informed that as of 1 March 2020 his employment had transferred to Eames Partnership Ltd. He was sent a new contract to sign with the employer’s name being changed. He signed it on 22 March. The exchange which the Claimant said in his evidence took place in relation to the contract (at paragraph 35 above) did not take place.

42 On 8 March the Claimant sent Mr Eames an email to inform him that he had placed a candidate in a role that would produce a fee of about £72,000 for the company. Mr Eames forwarded that to Guy Day with the comment “About time from Peter.”

43 On 1 March C sent an email to Andy Preacher at Insure the Box to explain why they were right to charge a cancellation fee. Mr Preacher responded on 14 March 2019. He was very critical of the way in which the Claimant had handled the whole matter and ended up by saying that he was seeking legal advice and asked to whom at Eames he could escalate the matter to raise his concerns about how the matter had been handled.

44 On 29 March the Claimant chased up two cancellation invoices with Swiss Re. On 8 April the HR Advisor at Swiss Re wrote to the Claimant and Mr Eames. She



expressed their disappointment at how the matter had been approached and asked for the cancellation fees in both cases to be waived. She said that the hiring managers did not believe that Eames had provide the level of service expected during a retained search and hence the searches had been called off. She set out how much business Swiss Re had provided to Eames and pointed out that they had already paid 2 out the 3 instalments for those two positions. On 9 April the Claimant sent Mr Eames an email on this issue. He accepted that the response was a disappointing outcome. Mr Eames responded that he was due to meet them the following week and that he would aim to negotiate a reasonable outcome.

45 In April 2019 Stuart White produced a Market intelligence Report for McGill & Partners In the introduction it said,

*“As a result of the restrictive covenants agreed between Aon and Steve McGill on his resignation from Aon, the report excludes any professional currently employed by Aon (note: these restrictive covenants expired in February 2019). Also, due to Eames Consulting Group’s strategic relationship, it was agreed from the outset that Aon would be off-limits.”*

A large number of candidates were listed in the report and there was a note at the end that it excluded individuals currently employed by Aon.

46 On 12 April Mr Eames arranged a meeting with the Claimant for the following week. He told the Claimant that they would review activity and pipeline and asked him to ensure that he had all his meeting notes. On 16 April, the day of the meeting, he asked him to print out the most recent communications with Insure the Box and Swiss Re in respect of the outstanding invoices. At the meeting they discussed his activity, pipeline and the recent fee disputes. It is not in dispute that at the meeting on 16 April Mr Eames expressed his unhappiness with the Claimant’s performance in strong and clear terms.

47 Following the meeting Mr Eames sent an email to Head of Finance which was copied to Guy Day. He said that they needed to remove some fees from the Claimant’s previous placements. As far as Aon Singapore was concerned he said that the Claimant had got the client to sign terms that the fee was based on all guaranteed emoluments and that the client was arguing that it did not apply to pension and flexible benefits. The figures needed to be adjusted downwards by £9,723. He said that he been through the details relating to Insure the Box and had little confidence that they would pay the cancellation fee of £12,480. He had met with people from Swiss re and had agreed to waive the cancellation fee for one individual. He asked him what the effect of taking those fees out would be on Claimant’s commission payment and concluded by saying “Safe to say I’m less than amused”. The effect of deducting those fees was that the Claimant’s fees revenue came to just under £47,000, considerably short of his commission threshold and of the £100,000+ which Mr Eames expected of him.

48 Mr Day’s comment was that it was very unimpressive for someone of the Claimant’s experience.

49 On 18 April 2019 Group Head of Legal at Insure the Box made a formal complaint about the cancellation fee and made it clear that it would not be paid.

Second protected disclosure

50 In his Further Particulars dated 11 December 2019 the Claimant said that he believed that in the week commencing 15 April he made a protected disclosure to Stuart White after he saw the Guy Carpenter talent map for UK Property and Casualty where he saw that a number of senior Aon employees had been approached for new job opportunities.

51 In his witness statement he talked about being excluded from McGill and Partners and said that when he finally saw who Stuart White was targeting he was shocked to see that it included a number of high-profile senior Aon employees and that he told both Stuart White and Matthew Eames that that would be in breach of their contracts with Aon. A couple of paragraphs later he said that matters were compounded when he saw the Guy Carpenter talent map. He does not say anything in his witness statement about making a protected disclosure after seeing that talent map.

52 In the course of these proceedings the Claimant disclosed a document which he says is the talent map to which referred in his further particulars and witness statement. It is a one page undated document. On the face of it, it is an Eames Partnership document. It has the Eames Partnership logo on it and it relates to Guy Carpenter Property and Casualty. There are five individuals whose names and profiles appear on that document. The same names and profiles appear on the Market Intelligence report created by Joel Westley on 19 February 2019. Three of them are Aon employees. The only difference between the original Westley report and the document disclosed by the Claimant is that the number "2" appears against all five individuals. According to the document, that denotes "approached." The only time that the original report was updated after it was created on 19 February was on 26 July 2019. It appears that the version that the Claimant has produced was created by Joel Westley on 26 July 2019.

53 In his witness statement the Claimant did not say when he first saw that document or how he obtained it. When he was asked about it when he was giving evidence he said that he was given it by Joel Westley in April. He said that Westley had emailed it to him at his work email address and that he had accessed the email on his personal phone and had downloaded the document and saved it. Hence, he had it after his employment terminated and was able to disclose it.

54 The Claimant has never said that he showed it to anyone at the Respondent; he did not show it to Mr Eames, Stuart White or HR. The evidence of the Respondent's witnesses was they had never seen the document before. If he had had the document at that time and had felt strongly about the Respondent breaching its legal obligations and he was being fobbed off by them, it is inconceivable that he would not have confronted them with what he says is clear evidence of those breaches. It is also inconceivable that it would not have been mentioned in his claim form. There is no reference to Guy Carpenter or the document in his claim form. Having considered all the evidence, we were driven to the conclusion that the Claimant acquired that document sometime after his claim form was submitted on 20 June 2019 and very likely after 26 July 2019. Hence it did and could not have played any part in him making any disclosures to Mr Eames or Mr White.

55 We also looked at the consistency of his evidence about the disclosures that he said that he made in the week commencing 15 April. In his further particulars he said that disclosure was made to Stuart White after seeing the Guy Carpenter talent map. In his witness statement there was no evidence of any disclosure being made after he saw Guy Carpenter talent map. In cross-examination he said that he had raised the issue of poaching with Mr Eames at the meeting on 16 April. When he was cross-examining Mr White he said that he had told him that he had been upset that Aon people had been identified in the Guy Carpenter document. In his closing submissions he made no reference to having made any disclosure to Mr Eames at the meeting on 16 April, but said that he had been upset at the meeting and when he had come out he had confronted Mr White about how he managed to get away with everything - low attainment, issues with clients, his activities regarding McGill and the targeting of AON candidates. The Claimant's accounts about what he disclosed and to whom are inconsistent and confused.

56 For all the reasons set out above and the additional points that we made in respect of the March disclosure, we concluded that the Claimant did not in the week commencing 15 April speak to either Mr Eames or Mr White about Aon employees being approached for other clients or about the Respondent being in breach of their legal obligations to Aon.

57 Following the meeting on 16 April 2019 Mr Eames made the decision to dismiss the Claimant. On 22 April (Easter Monday) he sent an email to HR. He said,

*"Peter hasn't been performing recently and I need to terminate his employment on Wednesday when I am back in the office. He's currently behind his financial target, has not sold any new retainers for 6 months and has encountered issues with the last four searches he has executed. He's given me very confidence he can turn this round [sic] and I'd like to exit him from the business. Can you let me know what if any more information you need and can someone pull together a termination letter?"*

Later in the day he informed HR that he might not be able to attend the meeting because of the medical condition of his father-in-law and that Mr White had agreed to conduct the meeting if necessary.

58 When he realised that he was not going to be in the office on Wednesday, Mr Eames asked Guy Day to conduct the meeting and Stuart White to accompany him. On 23 April he sent Guy Day an email highlighting the issues with the Claimant's performance. In essence, they were the issues with three clients in recent months that had led to fees being reduced, cancelled or not paid, his failure to achieve his targets in 2018 and in the first quarter of 2019, not meeting the target of 20 client meetings per month, he had no viable pipeline and had not sold a new search since the previous September.

59 The Claimant's case was that on 24 April 2019 he made another protected disclosure. He had a planned meeting with Aon at 11 am that day although the meeting was later cancelled. He said that prior to that meeting he asked Stuart White whether there was anything he should be aware of with regard to staff poaching, and that Mr White told him that no approaches had been made. Stuart White denied that any such conversation took place. For the same reasons that

we have given for finding that the Claimant did not make the earlier protected disclosure, we also concluded that he did not say that to Mr White on 24 April.

60 On the morning of 24 April Mr Day called the Claimant into a meeting. Mr White was also present. Mr Day had a termination letter that HR had prepared. He told the Claimant that he was being dismissed forthwith and briefly gave him the reason for his termination, which was that his performance had not met the expected levels. He told him that he would be paid in lieu of notice. The Claimant was understandably upset and asked whether the decision was final as he wanted another chance to prove himself. He was informed that the decision was final and that he needed to clear his desk and hand in all company property. The Claimant was given the termination letter that HR had prepared. The Claimant did not say at that meeting that the real reason that he was being dismissed was because he had raised concerns about poaching AON clients. If he had really believed at the time that that was the reason for his dismissal, it would have been natural for him to raise it then or shortly after that meeting.

61 On the same day Mr Eames sent an email to the UK Directors of Eames Consulting and the staff of Eames Partnership in which he informed them that the Claimant had left the business. He then went on to say,

*“Peter has failed to secure any new search work for several months and has also fallen short of the agreed level of net fee income attributable to a Partner. He has also failed to meet the key activity metrics for several months and his pipeline gave me little confidence of this situation changing in the short-term.”*

62 On 26 April Mr Eames spoke to the Claimant because Guy Day had suggested to him that he should. Following that conversation Mr Eames sent an email to Mr Day setting out briefly what had been discussed. We find that what is set out in that email is an accurate summary of the conversation. When dealing with his underperformance the Claimant put forward the challenges with the new brand of EP and the confusion with other Eames entities in the market as contributing to it. Mr Eames said to him that he needed to take more responsibility for his own performance and behaviour. The Claimant did not say anything to him about having been dismissed because he had raised concerns about Aon staff being poached. The Claimant did not in his witness statement say that he had said that. In cross-examination he said for the first time that he had referred to the poaching of clients during that call. He said that when Mr Eames referred in his email to the Claimant citing the challenge of the new brand that was what he had been referring to. We do not accept that. If the Claimant had mentioned the poaching of Aon employees during that call, he would have said so before and not raised it for the first time in cross-examination nearly 20 months after the event.

63 On 29 April the Claimant asked Ruth Foster for an exit interview. The exit interview took place over the telephone on 30 April and Ms Foster summarised the conversation in an email she sent to Eames shortly after the conversation. She said,

*“I asked him what he wanted from the conversation with me – 3 things: 1) for me to understand his feelings/vent, 2) to discuss process/HR process for future situs and 3) that he would like a month’s pay as an ex gratia*

*payment. He said he is not a “litigious” person but from a goodwill perspective, and to reflect what he feels is an unfair decision/process, this is what he asked for.”*

The Claimant did not in the course of that conversation say that he had been dismissed because he had raised concerns about the poaching of AON staff or breaches of non-solicitation agreements. If he had believed that and if he had any evidence to support it that was perfect opportunity for him to raise it and to show that evidence. If he wanted to ask for more money, which he did, that would have strengthened his hand. The Respondent refused to pay an extra month's salary which he wanted.

64 On 17 May Mr Eames informed Andy Preacher at Insure the Box that the Respondent would not pursue them for the cancellation fee and that he hoped the relationship between the Respondent and Insure The Box could continue. Mr Preacher responded that his breakdown in trust and confidence had been with the Claimant and hence the relationship with the company could continue.

65 After the Claimant's departure Stuart White received a telephone call from someone who he believed was the CEO of Drayton Finch. She said that she had been talking to the Claimant and asked Mr White to verify the billing numbers that the Claimant had given her. She gave him the numbers and he said that he would need to check them and would get back to her. Mr White spoke to Ruth Foster about it. She explained that the Respondent did not give references or any information beyond dates of employment and position held. She told him that she would deal with it. Ms Foster received a telephone call from Drayton Finch seeking a reference. She advised the person of the Respondent's reference policy and said that the correct means of making a request was to do so in writing. The Respondent never received a written request from Drayton Finch and hence no reference was provided.

66 On 4 May the Claimant sent Mr Eames a draft reference for him to sign. Mr Eames sought advice from HR and, on HR's advice, and did not sign the draft provided by the Claimant.

## **Conclusions**

67 We have found that the Claimant did not raise concerns with either Stuart White or Matthew Eames about the Respondent poaching staff from Aon or about them acting in contravention of the non-solicitation clause that they had with AON on the occasions when he said that he did. If he did not raise those matters with them, it follows that he did not make any protected disclosures and that is the end of his case. We have not seen any evidence to show that the Respondent recruited serving Aon staff on behalf of McGill and Partners. It is not in dispute that a number of Aon employees went to work for McGill and Partners. In light of the fact that Mr McGill was a former senior executive of AON that is not entirely surprising. It may well also be the case that there might have been speculation and gossip about whether Eames Partnership had played any part in it. But we have not seen any evidence of that and the Claimant has not pointed us to any evidence of it.

68 We have not found that Stuart White told the Claimant “to go back to his knitting” Even if he had, we do not consider that that would have amounted to a

detriment. The Respondent did not subject the Claimant to any detriment with regard to references. It simply followed its reference policy which it applies to everyone, which was that a request had to be made in writing and that only very limited information would be provided. That is a policy adopted by most firms nowadays. The Respondent did not refuse to give the Claimant a reference and it did not give him a negative reference.

69 We are satisfied that the Claimant was dismissed for the reasons that that Mr Eames gave to HR. He genuinely believed that the Claimant's performance was not up to the standard that he expected and had not been for a number of months. It is correct that the Respondent did not follow any capability process before dismissing the Claimant. As the Claimant had less than two years' service, it could do so without laying itself open to a finding of unfair dismissal. We have no doubt that the Claimant was very upset and angry about the way that he had been dismissed and that he felt that it was unfair. But we are also equally sure it had nothing to do with whistleblowing and nor did the Claimant think that it did. If he had believed that, he would have said so at the time.

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Employment Judge Grewal

Date 22 February 2021

REASONS SENT TO THE PARTIES ON

Date 22 February 2021

FOR THE TRIBUNAL OFFICE