EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103636/2020

Held via Cloud Video Platform (CVP) on 12, 13 and 14 January 2021;

Deliberations on 15 January 2021

Employment Judge P O'Donnell
Members Ms M McAllister
Ms E Farrell

Mr J Paton	**Claimant** **In Person**
Mitie Limited	**Respondent** **Represented by:** **Ms Veale - Counsel** **[Instructed by Pinsent Masons LLP]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the Claimant's complaint that he was subject to a detriment contrary to s47B of the Employment Rights Act 1996 is not well-founded and is hereby dismissed.

REASONS

Introduction

1. The Claimant has brought a complaint that he was subject to detriment contrary to s47B of the Employment Rights Act 1996 (ERA) on the basis that he was threatened by a fellow employee (causing him to go off work sick and losing wages as a result) because he had made a protected disclosure to the Respondent in terms of s43A ERA. The Respondent resists the claim.

2. The hearing was conducted by way of Cloud Video Platform (CVP).

Case management issues

3. This was a case where directions had been made for evidence-in-chief to be given by way of witness statements.

4. However, on reading the Claimant's witness statement, the Tribunal was concerned that this was not drafted with the sufficient level of detail needed to stand as evidence-in-chief. The Tribunal noted that the Claimant was a litigant in person and could not be expected to appreciate what was needed in a witness statement in the same way that a solicitor or other professional representative would.

5. In these circumstances, in order to comply with the overriding objective and in the interests of justice, the Tribunal considered that it would be appropriate for the Claimant to give oral evidence-in-chief. In order to balance any potential prejudice to the Respondent, the Tribunal indicated that, if the Respondent's agent considered that there was anything which arose in the Claimant's oral evidence that required to be addressed in the evidence-in-chief of the Respondent's witnesses, supplemental oral evidence could be taken from those witnesses.

6. During the course of his evidence on the first day of the hearing, the Claimant would regularly move out of camera view to check the page numbers of documents to which he was referring in his evidence-in-chief and it became clear

that the Claimant did not have the bundle in front of him and was relying on someone else to find documents. It also became clear that at times he was receiving prompts to questions being asked in cross-examination from someone else in the room.

7. The Tribunal adjourned for lunch early on the first day to allow the Claimant to identify those documents to which he wished to refer in evidence under explanation that he should not be moving out of view when giving evidence. Documents to which he referred would be taken as read unless there was a specific part to which the Claimant wished to draw to the Tribunal's attention.

8. The Claimant was also reminded that his evidence should be his own and that he should not be receiving prompts from anyone else.

Evidence

9. The Tribunal heard evidence from the following witnesses:-

    a. The Claimant.

    b. Paulina Panus (PP), an HR business partner with the Respondent to whom the Claimant made the alleged protected disclosure.

    c. Jacqueline Jenkins (JJ), dayshift supervisor with the Respondent, whom the Claimant alleges made the threats to him.

    d. Vassilia Koukouras (VK), QHSE manager with the Respondent, who heard the Claimant's grievance.

    e. Eddie Sargeant (ES), business support manager with the Respondent, who heard the Claimant's appeal.

    f. Lawrence Armstrong (LA), site manager for the Respondent at the site at which the Claimant worked.

10. There was an agreed bundle of documents prepared by the parties. Page numbers below are a reference to pages within the agreed bundle.

11. Although much of the sequence of events giving rise to the claim is not in dispute between the parties, there were some significant disputes on material facts or

how those should be interpreted. In particular, there was a dispute as to what JJ was alleged to have said to the Claimant in a conversation on 3 April 2020 in which it was alleged she made a threat of physical violence. There was also a dispute as to whether there was a subsequent conversation between the Claimant and JJ in which it was alleged that she made a further threat relating to her partner coming to work for the Respondent. The Tribunal, therefore, had to come to a view on the credibility and reliability of the witnesses.

12. LA gave very brief evidence, confirming the contents of his witness statement and was subject to very little cross-examination simply being asked to confirm that he had a good working relationship with the Claimant, that the Claimant had previously been offered the role of dayshift supervisor and the date when another employee had left. The Tribunal had no reason to doubt the credibility or reliability of his evidence.

13. Similarly, ES only gave evidence for a short period and the Tribunal found that the answers which he gave were honest and consistent with the documentary evidence. The only real challenge to his evidence in cross-examination related to an assertion by the Claimant that ES had not followed the Respondent's grievance policy in not carrying out an investigation before meeting the Claimant to discuss his appeal. This arose from a misinterpretation of the policy by the Claimant; the policy did not require prior investigation before any meeting but, rather, stated that the normal target for holding an appeal meeting might not be met if, among other circumstances, investigations were held before such a meeting. The Tribunal found ES's evidence to be credible and reliable.

14. The Tribunal considered VK to be an impressive witness who had a good command of the Respondent's policies and practices as well as the facts of the case. She gave her evidence in an open, direct and honest manner. She was able to respond to any matters raised by the Claimant in cross-examination and give consistent evidence. The Tribunal considered her to be a credible and reliable witness.

15. The Tribunal also found PP to be a credible and reliable witness. She gave honest answers to the questions put to her and was willing to accept certain

matters that were put to her which were not to the benefit of the Respondent's case.

16. JJ was clearly at pains to explain the issue with her surname which was at the core of the alleged protected disclosure by the Claimant and did, at times, seek to put forward the explanation rather than answering the question being put to her. However, the Tribunal did not consider that this affected the credibility and reliability of her evidence; her desire to provide an explanation was understandable given that it was being suggested that she had sought to hide a previous conviction and the issue of her surname was something which was clearly personal and upsetting. She was consistent in her evidence and gave what the Tribunal considered to be honest answers to the questions put to her.

17. The only issue in relation to which there was any question whether JJ's evidence was consistent with other evidence was one which arose as a result of the Claimant's misinterpretation of something said in VK's letter of 30 April 2020 giving the grievance outcome (pp167-169). JJ gave evidence that she had told the Claimant that her partner was starting with the Respondent (although she denied that this was used as a threat to the Claimant) and that there was someone else present for that conversation. It was put to her by the Claimant that VK's letter at the bottom of p167 stated that she had said that no-one else was present when she told him about her partner. However, on a plain reading, this is not what the letter says; it states that JJ denied making a threat relating to her partner and, separately, there being no witnesses to the alleged threat (which was the Claimant's position in his grievance) then VK could not uphold this element of the grievance. In these circumstances, the Tribunal did not consider that this had any impact on JJ's credibility or reliability and found her to be a credible and reliable witness.

18. On the other hand, the Tribunal found the Claimant to be a wholly unreliable witness and that his evidence, except where it agreed with others or the documents produced to the Tribunal, was lacking in credibility. It was quite clear to the Tribunal, from the evidence before it, that the Claimant was prone to exaggeration and hyperbole. He would jump to conclusions from very little

information and would hold to those even when more plausible positions were put to him.

19. The evidence from which the Tribunal reached their views on the reliability and credibility of the Claimant's evidence was as follows:-

    a. It was asserted in the letter making the alleged disclosure at p42, that one of the candidates for the dayshift supervisor position was "summarily dismissed" from this role on the basis that the candidate had obtained a forklift truck licence and that this prohibited him from being a supervisor. There was no evidence of any form of summary dismissal of this person nor was there any evidence that he had been prohibited from the supervisor position because of his forklift truck licence. He had, in fact, been appointed to the role of forklift truck driver and did not proceed with the application for the supervisor position.

    b. The Claimant went on to assert in evidence that he believed that he would be dismissed from his supervisor role because he also had a forklift truck licence. There was, however, no evidence to support this assertion and no evidence at all that the Respondent was even contemplating dismissing the Claimant for this or any other reason.

    c. In the letter making the alleged disclosure, the Claimant made assertions that JJ received favour above others (in the context of the process being followed for filling the vacant dayshift supervisor role) either due to favouritism or *"gender discrimination"*. However, there was no basis, even on the facts described in the Claimant's letter, to support these assertions; there had been three candidates for the vacancy, one had voluntarily withdrawn from the process with the other two doing the job for a trial period; one of those was then appointed to another role leaving JJ as the sole candidate doing the job on a trial basis. At the time at which the Claimant wrote the letter, JJ had not completed the trial period and had not been appointed to the role. It is very difficult to see any basis for an assertion of unlawful discrimination or favouritism on those facts.

d. In a text message sent by the Claimant to PP on 6 April 2020, he asserts that he is *"now being targeted by senior management"* for making the alleged disclosure and that he was *"to lose my position due to this"*. However, there was no evidence of senior management targeting the Claimant at that time (or, indeed, any other time) nor any evidence to suggest at the time (or later) that the Claimant was to lose his job.

e. The Claimant came to these conclusions solely on the basis that, during a conversation on 3 April 2020, JJ had said she knew he had contacted PP (although she did not say what was the subject matter of this contact) and the Claimant assumed this meant that JJ had been told of his email of 1 April 2020 by either PP or someone else within the Respondent. He maintained this position in the face of an explanation from JJ that she had been told by another employee that the Claimant was going to HR (that is, PP) about her surname and that it was this which she was putting to him during the conversation on 3 April.

f. At the grievance hearing on 17 April 2020, the Claimant asserted that he had been "*physically bullied*" (p161) despite the fact that, even taking his case at its highest, he had never made any allegation of physical bullying or contact.

g. In an email of 29 April 2020 from the Claimant to VK (p164), the Claimant asserts that he was subject to physical danger and at risk of physical violence from *"unknown parties"*. There was simply no evidence, at that time or subsequently, to support those assertions.

h. In a similar vein, during cross-examination and unprompted by any question, the Claimant stated that he was at risk of being stabbed in the car park at his place of work. Again, even taking the Claimant's case at its highest, there was simply no evidence to support this assertion.

i. There were a number of exaggerations and unsupported assertions in the Claimant's appeal email of 7 May 2020 (p177):-

    i. He asserted that substantial issues in his grievance were barely mentioned or ignored but could give no detail of these when

asked at the appeal hearing (p189) other than to say "*all of them*". It was patently not correct to say that all substantial issues had barely been mentioned or ignored given the detailed grievance outcome sent to the Claimant (pp167-169) which addressed all the issues which he raised.

ii. He stated that he was offered no support by the Respondent when, in fact, he had been offered mediation and had been referred to the Respondent's Employee Assistance Programme.

j. In an email sent on 29 May 2020 (p190), after the appeal hearing, the Claimant asserted that the Respondent had *"breached every acceptable timescale"* in the conducting his grievance. However, in cross-examination, he accepted that all but one of the timescales in the Respondent's grievance policy had been met.

k. In an email of 9 June 2020 sent by the Claimant to People Support (p206), the Claimant asserted that it was *"contrary to all documentation available to me"* that he only had one right of appeal. In cross-examination, he stated that the documentation to which he referred was the Respondent's grievance policy. The policy makes no reference to a second appeal.

l. In response to attempts by LA to arrange a welfare meeting during the Claimant's sickness absence and obtain further information about the effects of his condition and its prognosis, the Claimant replied (p245) that he found these to be *"intrusive, dispassionate and sinister"*. The Tribunal considered this to be something of an over-reaction to what is a common practice when employees are absent due to ill health for an extended period. In particular, it was clear from the documentary evidence regarding the welfare process that the Respondent was seeking to understand the reasons for the Claimant's absence, the likely timeframe for a return to work and whether they could provide support to him but that the Claimant was providing very little information in response. The Tribunal considered that there was nothing "sinister" in the process.

20. It was also clear to the Tribunal that the Claimant had the tendency to adopt an uncooperative attitude when asked to provide information about the issues in his case:-

    a. At both the grievance and appeal hearings, the Claimant was asked to set out details of his grievance/appeal but did not do so, simply referring to the written documents.

    b. The Claimant took a similar approach in providing his witness statement for the purposes of these proceedings. The second sentence of the email which was lodged as his witness statement reads "*I am uncertain as to why this is required* [a reference to having to provide the statement] *as I have submitted all documentation in my possession to both the tribunal and Mities legal representatives previously*".

    c. At the grievance hearing, the Claimant did not provide any suggestions as to any solution to his grievance and in evidence stated that this was not his responsibility but that of the Respondent. Whilst this is technically correct, the Tribunal considered that VK was acting reasonably in asking what would resolve matters for the Claimant in order to ensure that any solution was something he found acceptable rather than something imposed on him but the Claimant was not prepared to engage in that discussion.

    d. At the appeal hearing, ES sought to gather further detail of the basis of the Claimant's appeal by asking him to expand on the ground of appeal that substantial issues had been ignored in the grievance outcome. The Claimant's reaction to this was to simply terminate call.

    e. In the welfare process conducted by LA, the Claimant was unwilling to attend meetings and, when he was allowed to provide information on his absence, the information provided was, in the Tribunal's view, sparse and lacking in detail. This required LA to make several requests for more information. For example, the Claimant was asked a number of times what the Respondent could do to support him and his response was to say "*continue to do your best*". It is difficult to see how any

employer could identify steps to assist an employee back to work based on that response.

21. For all these reasons, the Tribunal found the Claimant's evidence to be unreliable and lacking in credibility. Where there was a dispute between the Claimant's evidence and the evidence of any of the Respondent's witnesses then the Tribunal preferred the evidence of the Respondent's witnesses.

Findings in fact

22. The Tribunal made the following relevant findings in fact.

23. The Claimant was employed by the Respondent as a weekend dayshift supervisor. He held this role from 1 August 2015.

24. The Respondent is a facilities management company which provides contract cleaning services. The Claimant worked at a site described as "GLA1" which is a warehouse operated by the online retailer, Amazon, with whom the Respondent has a contract to provide cleaning services at this site.

25. On 1 April 2020, the Claimant sent an email to PP, the Respondent's HR contact for the GLA1 site, copied to the account director for Amazon. This email is at pp42-43.

26. The email related to the process being followed to fill a vacant dayshift supervisor post which covered the weekdays and was a counter-part to the Claimant's role at the weekend.

27. The bulk of the email set out the Claimant's concerns that one of the candidates (JJ) was benefiting from favouritism in the recruitment process and that there may be gender discrimination in her favour. It sets out the circumstances in which the vacancy arose and an earlier unsuccessful attempt to fill the vacancy from internal candidates.

28. The email goes on to allege that a "*higher authority*" overturned the decision not to recruit internally and that three internal candidates were being considered.

One of those candidates withdrew from the process and the remaining candidates were to carry out the role on a two month trial basis each.

29. It was then alleged that one of those candidates was "*summarily dismissed*" from the trial period. This was incorrect; this candidate had secured a forklift truck licence and was appointed to the role of forklift truck driver.

30. The remaining candidate was JJ and the Claimant's emails goes on to say that her reviews in the past 6 months had shown shortcomings and makes allegations about poor attendance, timekeeping and performance on her part.

31. Towards the end of the email, the Claimant set out the following:-

"I was also being approached by Amazon Associates expressing concern that Candidate Three [a reference to JJ] *may have obtained employment with Amazon/Mitie by means of deception (she did change her name to that of her stepfather). It was put to me that this name change came about in order to pass a basic disclosure thereby avoiding the detection of a serious theft conviction."*

32. The reference to JJ's name is a reference to the fact that she was known by her stepfather's surname for the early part of her life but used her birth father's surname from her teenage years onward. She did not have a conviction for theft or any other serious criminal offence.

33. The Claimant had become aware of the issue with JJ's surname approximately a year earlier; the Claimant had approached LA regarding this issue and made the assertion that she had changed her name to avoid a disclosure check. LA considered that this would have been picked up in any disclosure check and no further action was taken.

34. On receiving the Claimant's email of 1 April, PP contacted the Claimant on the same day to explain that the Respondent would look into these matters further. She explained to him that, given that he was not personally affected by the issues and for data protection reasons, they would not communicate the outcome to him. This was confirmed in an email dated 2 April 2020 (p115).

35. On 3 April 2020, the Claimant returned to work after a period of leave and had a meeting with JJ to discuss new processes put in place during his leave to deal with issues arising from the COVID pandemic.

36. The Claimant asked JJ if he could record the conversation to which she agreed. A transcript of the conversation is at pp276-282. The bulk of it relates to the new processes now being followed.

37. At p281, the following exchange takes place:-

JJ *I tried to contact you on the phone and that's all registered on the phone as well. I've tried to contact you on the phone to pass on stuff from Paulina* [a reference to PP]*, HR woman*

JP *Yeah, I know.*

JJ *You've spoke to Paulina haven't you?*

JP *Aye, definitely have.*

38. At this point in time, JJ had been told by another employee, Alan Rooney, that the Claimant had been asking questions about her surname and had said that he was going to HR about this issue. The only HR person whom JJ knew was PP and so she had surmised that this was whom the Claimant would speak to about her name.

39. The conversation then continued with JJ making the following statement, "*Yeah, I know you have but it's all going to come back round and shoot you in the feet*." The Claimant alleges that JJ said "face" and not "feet" but, for reasons set out below, the Tribunal prefers JJ's evidence that she said "feet".

40. Again, this was said by JJ because she understood from what Mr Rooney had told her that the Claimant had approached HR about her surname.

41. The Claimant sent PP an email at 20.17 on 3 April 2020 attaching the audio file with a recording of his conversation with JJ. In the email, he states that he feels

compromised because there is what he believes to be a reference to his communication with PP and that there is a "*veiled threat to my eyes*".

42. On 6 April 2020, PP received a number of text messages from the Claimant starting at 08.56 and continuing into the evening (pp121-127):-

    a. The first text asks if PP had received the emails he sent on 3 April to which PP replied that she had and was reviewing them.

    b. At 10.10 (p123), the Claimant sent a further text message stating that he has been feeling increasingly anxious in the workplace. He stated that he felt that there was a breach of trust and that he was being targeted by senior management for raising an issue that was part of his job. He goes on to say that he has good attendance and timekeeping but that "*now I am to lose my position due to this*".

    c. At 12.38 (pp125-126), the Claimant sent a long text message stating that he was just back from the GLA1 site having been asked to come in on his day off to help slimline the rota but was told this was not sanctioned. He sets out a description of discussions he had that day but does not say with whom. The text concludes with the Claimant saying that "*the whole scenario is making sick and a bit suicidal, am I to lose my job, my house, my car.*"

    d. At 15.51, PP sent the Claimant an email (p120) explaining that she had some points she wished to clarify in relation to his email of 3 April and asking to arrange a telephone call to discuss these. In the email, PP states that the contents of his 1 April email were only shared with Mike Thompson, senior operational manager, and Paul Leary, account director.

    e. At 16.01, PP sent the Claimant a text message apologising for not responding sooner and that she had sent him an email asking for a call to discuss the points raised by him.

    f. The Claimant replied at 17.56 asking if he should contact a union representative and PP responded at 18.04 to say that she was not

seeking a formal meeting but just wanted to make sure that she had captured all the points he sought to raise. She went on to state that he could have a representative if he wished.

43. A meeting was arranged between PP and the Claimant for 8 April 2020.

44. The issue regarding JJ's surname was passed to Mike Thompson, senior operations manager, to investigate. He met with her on 7 April 2020 and the discussion was noted in an email Mr Thomson sent to PP the same day (p129). Mr Thompson opened the meeting by explaining that there had been a report that a client overheard JJ stating that she had changed her name to obtain a clear disclosure check. No mention was made of the Claimant having provided this information. JJ stated that she had expected this and she knew who had made the allegation.

45. Neither the existence nor the contents of the Claimant's email of 1 April 2020 was disclosed to JJ at any time until it became necessary for these proceedings.

46. Just prior to the meeting between PP and the Claimant on 8 April 2020, PP received an email from the Claimant setting out what was subsequently treated as a formal grievance (pp131-133). The grievance makes reference to events in March but it is common ground between the parties that this is in error and that the dates referenced are all in April 2020.

47. This grievance referred to bullying by Joyce Sloman, senior manager, and JJ. It starts by saying that immediately after the conversation between the Claimant and JJ on 3 April 2020, JJ informed him that her partner was starting with the Respondent through an agency and that "*I had better watch myself when he gets here*". The Claimant describes this as "*threat number two*" with the other being the audio file where JJ tells him "*things will blow up in my face*".

48. The rest of the grievance goes on to set out complaints made by the Claimant about events which were said to have occurred on 4-6 April 2020. For the purposes of the issues to be determined, the Tribunal does not consider that these need to be rehearsed in detail other than to say that the Claimant sets out matters in considerable detail including description of various conversations

between him and other employees which he says occurred on the days in question in a transcript format.

49. Towards the end of the grievance, the Claimant summarises the matters which he describes as bullying; he was being thwarted at every turn in his attempts to improve systems; he did not have log-in details for certain computerised systems despite being a supervisor for four to five years whereas JJ was only a supervisor for a year and had one; no training opportunities; JJ is "*now training for David's job*"; having to over explain himself; denial of access to phone and computer; being excluded from decisions. None of these matters form the basis of the Claimant's complaint to the Tribunal and are not said to be the detriments on which his claim is based.

50. In the very last paragraph of the grievance document, the Claimant repeats the allegation that he has been threatened twice by JJ and that he had no intention of interacting with her when he returned to work.

51. At the subsequent telephone call, PP explained to the Claimant that, in light of the issues he was raising, she considered that it would be appropriate to deal with the matter by way of the Respondent's formal grievance process. She also made the Claimant aware of the Respondent's Employee Assistance Programme and asked whether there was anything which the Respondent could do to help him. The Claimant did not put forward any suggestions.

52. On 9 April 2020 at 13.56 (p135), the Claimant sent a text message to PP asking for a copy of the Respondent's bullying policy. He went on to ask if she could guarantee his safety in the workplace or if he should call the police if his personal safety was threatened. He went on to explain the effect these matters were having on him. A copy of the Respondent's policies were sent to him by email from PP the same day (p136).

53. VK was appointed to hear the Claimant's grievance and she sent him an email on 9 April 2020 (p137) inviting to a meeting on 10 April 2020 regarding his grievance. At the Claimant's request, the meeting was rearranged for 17 April 2020.

54. A note of the meeting is produced at pp158-162. VK chaired the meeting and David Thomas was present as a note-taker. The Claimant was accompanied by his brother, William Paton.

    a. The meeting started with VK asking the Claimant to take her through what had happened to which the Claimant replied that he had already set this out in his email to PP.

    b. VK stated that she could see that the grievance was about bullying and asked the Claimant to take her through this. The Claimant again stated that he had put down all information in his email and did not know what other details VK wanted.

    c. VK asked if there was anyone else present with Joyce Sloman and JJ when the conversations took place to whom she could speak. The Claimant again responded that he had set all the information down in his email.

    d. VK explained that she was following process to try to get the bottom of the issues. The Claimant responded that he had passed on to the HR department how this was affecting him. He asserted that he was running the whole site while going through this and that he had received threats as a direct result of a confidential breach. He complained about the timescales saying that he had sent his letter at the start of April (it was not clear which communication was being referenced) and that the meeting was only now being conducted.

    e. VK asked the Claimant what outcome he was looking for and he replied that he would like to reference his first letter and was asking whether the processes within the Respondent were acceptable but no-one had answered him. He stated that he had received threats from the start.

    f. The Claimant went on to state that the second letter turned more sinister and that attitudes towards him had changed which is why he raised his grievance.

g. VK explained that she would have to approach the parties concerned to investigate.

h. The Claimant stated that he was not asking for anything. He just put matters to HR and did not want to come to work to be bullied and threatened.

i. VK suggested mediation to try to resolve issues but the Claimant rejected this option.

j. VK asked the Claimant whether a strongly worded communication to the other parties would be enough to resolve matters for the Claimant. He replied that it was not for him to decide and that VK had to follow the processes. He just did not want to have to come to work to deal with this.

k. VK explained that she did not want an outcome to be decided in his absence and wanted to know what the Claimant considered would be a suitable outcome. The Claimant replied that he did not hold grudges but in this instance he had been physically bullied and that he was not going to "*make up or negotiate on this matter*".

l. The meeting concluded by VK giving the Claimant the opportunity to add anything else and explaining what would happen next.

55. On 29 April 2020, VK sent the Claimant an email asking how work was going and how he was feeling (p163).

56. Later that same day, the Claimant sent an email to VK (p164-165) stating that he was severely disappointed that he had not had any update since their meeting. He went on to state that he was aware that his colleague who had threatened him was still at work and he was, therefore, exposed to physical danger at the start and end of his shift as he could be pointed out on the way to his car or followed home. The email goes on to state that his mental health had been impacted and that no-one cares about this despite proof that he had been threatened at work. He described the conduct of JJ and Ms Sloman as

"*shameful, personally motivated and disgraceful in light of the crisis the whole world is now facing*".

57. After her meeting with the Claimant, VK spoke to JJ about the allegations of threatening behaviour. JJ denied that she had made a threat during the conversation on 3 April and explained that she had simply been saying that the allegations around her surname would come to nothing but would all come back round and shoot him in the feet.

58. In relation to the allegation regarding her partner, JJ could recall a discussion with the Claimant in front of another employee, Alexander Montgomery, about new people starting with the Respondent in the context of them needing high-visibility vests and safety shoes in certain parts of the site. She mentioned that one of the new starts was a colleague's girlfriend and that her partner was also starting with the Respondent. She denied making any mention of the Claimant having to watch what he said because her partner was starting with the Respondent.

59. As it turned out, JJ's partner did not take up employment with the Respondent to avoid there being any issue in relation to his presence as a result of the allegations made by the Claimant.

60. VK issued her outcome letter to the Claimant on 30 April 2020. It was sent by a covering email (p166) and the letter itself is at pp167-169. VK did not uphold the Claimant's grievance. In particular, VK found that there was insufficient evidence that JJ had threatened the Claimant. She did note that the phrase used by JJ during the conversation on 3 April may have upset the Claimant. VK did address the other issues raised in the Claimant's grievance but these are not relevant to the issues to be determined in this case. The outcome letter set out how the Claimant could appeal the decision.

61. On 7 May 2020, the Claimant emailed ES to appeal the grievance outcome (p174). The grounds of appeal were that the Claimant considered that substantial issues raised by him had been barely mentioned or ignored, no solution other than mediation had been suggested and that there was a lack of documented proof of interviews conducted with others in relation to the

investigation of his grievance. The email concludes by stating that the Claimant has requested this documentation and that he would be in touch with ES to progress matters once he has received this.

62. In relation to that last point, the Claimant had sent an email to VK on 6 May 2020 asking for a range of documents in relation to the investigation of his grievance (p170). She responded by an email of 12 May 2020 (p178) to say that there was no written note of her interview with JJ.

63. ES acknowledged the appeal by email dated 12 May 2020 (p176) and confirmed that he would organise a meeting with the Claimant as soon as he had received the information in relation to the grievance.

64. On 14 May 2020, the Claimant emailed ES (p181) to say that he wished to proceed with his appeal in light of the fact that the documentation he had been seeking did not exist.

65. On 21 May 2020, the Claimant emailed ES (p182) stating that it had now been 7 days since he had said he wished to proceed and that he had had no response. He complains that it feels that the company was attaching no urgency to the matter and that this was consistent with how the process had been dealt with from the start.

66. By email dated 22 May 2020 (pp183-185), ES invited the Claimant to an appeal meeting to be held on 29 May 2020.

67. A note of the appeal meeting held on 29 May 2020 is at pp188-189. The Claimant attended accompanied, again, by his brother.

    a. ES opened the meeting by asking the Claimant to set out the basis of his appeal. The Claimant responded that he had set this all out in writing.

    b. ES explained that he had everything in front of him and the purpose of the meeting was to understand why the Claimant had appealed and find a resolution.

c. The Claimant replied that he had two questions for ES to answer and asked him if he had any resolution at this point.

d. ES replied that he did not yet and if there is anything the Claimant wished to bring to the table then he would investigate it.

e. The Claimant asked whether ES he had all the relevant information to which he replied that he had the outcome letter and the note of the meeting with VK.

f. The Claimant asked why statements were not taken and why notes were not taken. ES replied that, as far as he knew, people had been spoken to but notes were not taken.

g. The Claimant stated that he could not understand why more statements were not taken although he did not say from whom such statements should have been taken.

h. ES then referred to the appeal letter and asked the Claimant to specify which issues he said had been ignored. The Claimant replied "*all of them*". He then went on to say that the grievance was not taken seriously. He was offered no support by the Respondent and that he had put himself in danger in the workplace. He asserted a belief that ES knew nothing about the case and the meeting was over. He then terminated the call.

68. After the meeting, the Claimant sent an email to ES the same day (p190). He explained that he had terminated the call when it became apparent that nothing had been done to resolve his grievance. He complained that the Respondent had breached every acceptable timetable in every instance as set out in their own Handbook. He went on to say that the company had not supported him and the only action taken was by him when he removed himself from the danger in the workplace.

69. ES proceeded to issue an outcome to the Claimant by email of 29 May 2020 (pp191-194). He did not uphold the appeal on the basis of the information available to him.

70. On 9 June 2020, the Claimant emailed the People Support email address (p206) recording his discussion with Lucy McMillan in HR. He stated that she had told him that there was only one right of appeal and that he contested this as being contrary to all documentation available to him. The documentation to which the Claimant refers is the Respondent's grievance policy produced at pp86-91 and this documents makes no mention of a second appeal.

71. On 1 May 2020, the Claimant had commenced a period of sick leave. Under the Respondent's procedures, when an employee is absent for four weeks then a welfare process is begun. LA was appointed to lead that process as the site manager where the Claimant worked.

72. On 11 June 2020, LA emailed the Claimant inviting him to attend a welfare meeting on 15 June 2020 (p213). The purpose of the meeting was to discuss his absence, obtain an update to his circumstances and identity whether there was any support which the Respondent could provide that would allow the Claimant to return to work.

73. The Claimant replied the same day stating that he could not attend the meeting (pp214-215). He goes on to set out the reason for his absence and that he is receiving ongoing treatment. He concludes by saying that he is unfit to attend the welfare meeting.

74. LA replied by email the next day (p214) and informed the Claimant that the planned welfare meeting was cancelled and that this would be looked at again on 22 June 2020 with a view to arranging a new date for the meeting. The email goes on to explain the purpose of the meeting.

75. On 23 June 2020, LA emailed the Claimant to invite him to a welfare meeting on 25 June 2020 (pp216-218). The Claimant replied by email on 24 June 2020 (p219) to say that he was not fit to attend on the revised date for the meeting. He stated that he was willing to provide a written response regarding his absence but had reservations about this in terms of his privacy being maintained. He subsequently completed a pro-forma questionnaire provided by the Respondent which he returned to them by email dated 30 June 2020 (pp221-224).

76. LA considered that the Claimant had not been forthcoming in the responses to the questionnaire. In particular, in response to a question asking what support could be provided to the Claimant to assist him in returning to work, the Claimant replied "*no comment*".

77. LA, therefore, sent a series of follow-up questions by email dated 2 July 2020 (p225). The Claimant responded the same day (p228) indicating, in terms of support from the Respondent, that they could help him with the struggles he was facing. However, the Claimant gave no detail of what form that could take and so LA emailed him on 3 July 2020 (p229) to ask for more information about what the Respondent could do. The Claimant replied to this by email dated 20 July 2020 (pp236-237) but did not give any real response simply stating that the Respondent could support him by "*continue to do your best*" and giving no time frame for a potential return to work.

78. Given the lack of information from the Claimant, LA decided to ask for his consent to obtain an Occupational Health report and wrote to him regarding this by letter dated 21 July 2020 (pp241-242). The Claimant replied by email dated 28 July 2020 (p245) stating that he was not prepared to hold any meeting with the Respondent until he had accessed medical services which he had not been able to do due to the Covid crisis. He goes on to state that he found "*the tone and manner of these welfare meetings to be intrusive, dispassionate and sinister*".

79. The Claimant did, subsequently, give consent for an occupational health report but he resigned from his employment with the Respondent before this was obtained.

Claimant's submissions

80. The Claimant made the following submissions.

81. He had made a protected disclosure to Mitie which Mitie shared with the person involved in the disclosure.

82. Mitie failed to investigate or take action about threats made against him despite proof being shared.

83. The Respondent failed to offer an appeal hearing because the manager involved only printed a copy of the initial grievance.

Respondent's submissions

84. The Respondent's agent produced written submissions and supplemented these orally.

85. The written submissions set out the facts which the Respondent invited the Tribunal to make. The Tribunal does not propose to set these out in detail.

86. Ms Veale then went on to set out what she considered to be the relevant law. She set out the relevant statutory provisions and then outlined a number of authorities on which she sought to rely:-

    a. Any communication must have sufficient factual content capable of tending to show one of the matters listed in s43B(1) and a mere allegation is not enough (*Kilraine v Wandsworth LBS* [2018] ICR 1850).

    b. The factual accuracy of the allegations is not determinative of whether one of the relevant failures listed in s43B has been or is likely to occur but can be an important tool in deciding whether the worker had a reasonable belief that the disclosure tended to show a relevant failure (*Darnton v University of Surrey* [2003] ICR 615).

    c. The term "likely" in this context requires more than a possibility or risk of a relevant failure (*Kraus v Penna Plc* [2004] IRLR 260).

    d. Any belief on the part of the worker must be genuinely and reasonably held at the time at which the disclosure is made (*Kilraine*).

    e. In determining whether any disclosure is in the public interest, the Court of Appeal in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731 set out factors which should be considered:-

        i. The number of people whose interests are served by the disclosure.

ii. The nature of the interests affected and the extent to which they were affected by the wrongdoing disclosed.

iii. The nature of the wrongdoing disclosed.

iv. The identity of the alleged wrongdoer.

f. It was not necessary for there to be physical or economic damage for there to be a detriment and the question is whether the claimant has suffered a disadvantage (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL) and that the test is objective (*De Souza v Automobile Association* [1986] ICR 514).

87. The submissions then set out certain clarifications around the issues in the claim. It was pointed out that, although the Claimant had now resigned from his employment with the Respondent, this was not a constructive unfair dismissal claim. Further, although the Claimant made allegations of unlawful discrimination in the correspondence making the disclosure, he did not rely on those allegations and this was not a claim for victimisation under the Equality Act.

88. Ms Veale made submissions about the credibility of the Claimant and set out a number of matters which she submitted should have an adverse effect on the credibility of the Claimant's evidence.

89. It was submitted that the alleged disclosure did not amount to a disclosure of information but rather the Claimant was conveying rumours which were said to be spread by Amazon employee that JJ had changed her name. This does not tend to show that JJ had committed fraud. All that the Claimant was doing was conveying a rumour and this was not enough to amount to a disclosure of information.

90. The email from the Claimant did not show that a criminal offence was likely to be committed or that a legal obligation was likely to not be complied with. It related to past events and, in such a case, the information disclosed must show that a relevant failure had occurred. In this case, there was no information to show that the allegations were accurate or that relevant failures occurred.

91. In any event, the information in the Claimant's email did not show that a relevant failure was likely to occur; it simply disclosed rumours that were allegedly being spread and did not show that it was more likely than not that a relevant failure had occurred.

92. It was submitted that the Claimant did not have a reasonable belief that the information which he disclosed tended to show a relevant failure; the information was based on rumours and his personal views. The Claimant stated that JJ "*may*" have obtained employment by means of deception seeking to avoid a serious conviction being uncovered by a DBS check. It was submitted that "may" does not amount to "likely" following the decision in *Krause*.

93. Viewed objectively, the Claimant could not reasonably believe that the information discloses a relevant failure. No reasonable worker would think that a rumour from an unknown source with no supporting evidence showed a relevant failure.

94. In relation to the issue of whether the disclosure was in the public interest, Ms Veale set out matters relating to the relationship between the Claimant and JJ and the timing of the disclosure in some detail which the Tribunal does not propose to repeat. Founding on these matters, she submitted that the disclosure was made in the Claimant's own self-interest (that is, he was seeking to ensure that JJ did not secure the dayshift supervisor role) and not in the public interest.

95. In particular, it was submitted that, applying the subjective element of the test, the Claimant did not believe that his disclosure was in the public interest. Reference was made to the contents of the email in which the Claimant stated that he was expressing a personal view or opinion. It was submitted that he knew that he was simply advancing hearsay or rumours rather than disclosing information which amounted to a protected disclosure. It was only later than he made attempts to suggest that his alleged disclosure was in the public interest when he sought to link these matters to the COVID crisis.

96. In any event, it was submitted that the Claimant could not have reasonably believed that his alleged disclosure was in the public interest; the Respondent

was not a prominent company with public-facing services and his disclosure related to only one person.

97. In terms of whether the Claimant suffered a detriment, it was submitted that the Tribunal should prefer the evidence of JJ that, during the conversation on 3 April 2020, she used the phrase "shoot you in the foot" in the commonly understand usage of that phrase to mean that someone's actions will backfire on them or not achieve the desired result. Such a phrase could not reasonably be construed as a threat.

98. Similarly, Ms Veale urged the Tribunal to accept JJ's version of events in relation to the second alleged threat regarding JJ's partner and find that she had simply mentioned to the Claimant that her partner was starting work with the Respondent but did not suggest that he "*better watch himself*" as a result. It was submitted that JJ had a clear and detailed recollection whereas the Claimant gave little or no detail in his evidence.

99. Further, given that the second alleged threat was made on the same day as the first, it was submitted that it was simply not believable that the Claimant would not have mentioned this in his email to PP that same evening when he raised the first alleged threat with her.

100. It was submitted that there was no medical or other evidence put before the Tribunal to support the Claimant's position that he went off sick as a result of any alleged threats. A number of matters were referred to by Ms Veale as showing that the Claimant had failed to engage in the Respondent's welfare process. It was said that there was no sufficient causal link between the alleged threats and the Claimant's absence.

101. Ms Veale went on to make submissions on issues relating to remedies but, given the Tribunal's conclusions below, it was not considered necessary to set these out.

<u>Relevant Law</u>

102. Section 47B ERA makes it unlawful for a worker to be subject to a detriment on the grounds that the worker made a "protected disclosure".

103. A disclosure is a protected disclosure if it meets the definition set out in s43A ERA read with ss43B-H:-

43A Meaning of 'protected disclosure'

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any sections 43C to 43H.

43B Disclosures qualifying for protection

(1) 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—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part 'the relevant failure', in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).]

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure …—

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

104. The question of whether there is a detriment requires the Tribunal to determine whether “by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work” (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

Decision

105. The Tribunal considered that there were three issues to be addressed in considering the substantive merits of the claim; whether the Claimant had made a protected disclosure, whether the Claimant had been subject to a detriment and whether he had been subject to any such detriment because he had made the protected disclosure in question. If the Tribunal found in the Claimant's favour on all three of those issues then the fourth issue of remedy would arise.

Was there a protected disclosure?

106. The first question for the Tribunal was whether the communication on which the Claimant relied as his protected disclosure contained a disclosure of information and, if so, what information was disclosed.

107. The Tribunal considered that, on the basis of the evidence presented to it and a plain reading of the Claimant's email of 1 April 2020, there was a disclosure of two pieces of information:-

    a. That Amazon associates were telling the Claimant that JJ may have obtained her employment with the Respondent by deception by changing her name to avoid the Respondent discovering a conviction by theft in the disclosure check.

    b. That JJ had changed her surname to that of her stepfather.

108. The next question is whether this information showed or tended to show one of the relevant failures listed in s43B(1). The Claimant's case was advanced on the basis that the information tended to show either s43B(1)(a) or (b) (that is, a criminal offence or failure to comply with a legal obligation.

109. The Tribunal considered that the two pieces of information disclosed when taken on their own did not disclose a relevant failure. A mere change of surname is

not inherently unlawful or even unusual especially given the social conventions that tend to apply to women on marriage or divorce. A woman being known by a different surname is not, in itself, unusual.

110. Similarly, the Claimant informing the Respondent of mere rumours being spread by Amazon staff does not in itself tend to show that a criminal offence has been or is likely to be committed nor does it show that a legal obligation is not being met. All it tends to show is that rumours and gossip were being spread about JJ.

111. However, taking the two pieces of information together, the Tribunal did consider that this was capable of tending to show that a criminal offence has been committed or a legal obligation has not been met. When the two pieces of information disclosed are considered together then the change of JJ's surname is given a context which suggests that it has been done for an unlawful purpose. In these circumstances, the Tribunal does consider that the information disclosed is capable of being information which tends to show a relevant failure within the scope of s43B(1)(a) or (b).

112. The Tribunal then has to turn to the question of whether the Claimant reasonably believed that the information he was disclosing tended to show the relevant failure.

113. In determining this question, the Tribunal took account of the Claimant's evidence that he considered this to be shop floor talk to which he was alerting the Respondent and that he did not have a belief in it himself. The Tribunal considered the content and context of the disclosure which came at the very end of the Claimant's email of 1 April 2020, much of which was spent setting out his issues with the recruitment process for the dayshift supervisor vacancy and why he considered JJ to be unsuitable for the role. The issue around her change of name was added at the end and the Tribunal considered that this was added by the Claimant in order to add more weight to his attempts to persuade the Respondent that JJ should not be appointed to the vacancy.

114. The Tribunal noted that the Claimant did not make any effort to check the accuracy of what he says he was being told about JJ's name. Indeed, it was his evidence that he had, in fact, raised the issue of her surname with management

approximately a year prior to his email of 1 April 2020 and had been told at the time that any disclosure check carried out would have picked up any previous names used by JJ.

115. In these circumstances, the Tribunal did not consider that the Claimant had any belief, let alone a reasonable belief, that the information he was disclosing tended to show a relevant failure given his evidence that he did not have any such belief and that he had already raised the issue with the Respondent and been given an answer which demonstrated that a change of surname would not defeat the disclosure check process.

116. Similarly, the Tribunal did not consider that the Claimant had a reasonable belief that his disclosure was in the public interest. The closest the information he provided to the Respondent comes to being related to a public interest is related to the issue of the disclosure check. There was no evidence as to why this was insisted upon by Amazon and any potential reason is not within judicial knowledge.

117. It is certainly not the case that there is an obvious reason which would be in the public interest as to why an organisation such as Amazon required these checks. It is not, for example, dealing with vulnerable people or children who need particular protection but, rather, is a retail operation operated online.

118. In these circumstances, the Tribunal considered that the only people interested in the disclosure check would be Amazon, Mitie and the employee in question (that is, JJ). There was no reasonable basis on which the Claimant could believe that there was any wider public interest in the information being disclosed.

119. In these circumstances, the Tribunal finds that the information disclosed by the Claimant in his email of 1 April 2020 did not amount to a qualifying disclosure as defined in s43B ERA and was, therefore, not a protected disclosure as defined in s43A.

Was the Claimant subject to a detriment?

120. Although the Tribunal’s finding in relation to the question of whether there was a protected disclosure would be sufficient to dispose of the claim, the Tribunal has

gone on to address the issues of whether, if there had been a protected disclosure, the Claimant had been subject to a detriment and whether he had been subject to that because he had made a disclosure.

121. The Claimant relied on three detriments; the alleged threats by JJ; going off on sick leave; a loss of pay while on sick leave. On a question from the Judge, the Claimant clarified that these were not three independent and separate detriments but, rather, that the second and third alleged detriments flowed from the first. To put it another way, the alleged threats caused him to go off sick and being off sick was what led to his loss of wages because he was paid Statutory Sick Pay rather than his normal wage when he was off sick.

122. The Tribunal, therefore, first considered whether the Claimant had been threatened by JJ given that this was the fundamental allegation of detriment from which all other losses or damages flowed.

123. In considering the alleged threats, the Tribunal had to resolve two disputes of fact between the Claimant and JJ.

124. First, there was the question of whether, during their conversation on 3 April 2020, JJ had used the phrase "*shoot you in the feet*" as she says she did or the phrase "*shoot you in the face*" as the Claimant says she did.

125. As stated above, the Tribunal found the Claimant to be an unreliable witness and preferred the evidence of JJ where this was any dispute between them. Further, having reviewed the transcript of the conversation based on the recording made by the Claimant, the Tribunal considered that the phrase "*shoot you in the feet*" was more likely; the phrase "shoot your own foot (or feet)" is a common idiom meaning something done by someone which was against their own interests or which would backfire and achieve the opposite outcome. In the context of their conversation, it was quite clear to the Tribunal that this was what JJ was saying to the Claimant as opposed to actually threatening to shoot him especially given that the conversation then moved to discuss other matters with the Claimant saying nothing which would indicate that JJ had made a threat to actually shoot him. The Tribunal considered that this is yet another example of the Claimant's habit of exaggerating matters.

126. The second dispute relates to the alleged threat arising from JJ's partner coming to work at the same premises and that the Claimant should "watch himself" as a result. JJ denies making such a threat and, rather, that the fact of her partner coming to work for the Respondent was mentioned in passing in conversation about new staff.

127. Again, for reasons set out above, the Tribunal prefers the evidence of JJ as opposed to the Claimant. In addition to the Tribunal's reasons for finding the Claimant to be an unreliable witness as compared to JJ, in the specific context of this issue, he gave no real detail of this alleged threat whereas JJ could recall the context and content of the conversation as well as who else was present.

128. Further, it was the Claimant's case that this alleged threat was made on 3 April 2020 (that is, the same day as the first alleged threat) but he makes no mention of it in his email that evening to PP. Given the content of the Claimant's correspondence about his grievance which, in some instances, include what amounts to transcripts of whole conversations, the Tribunal finds it very hard to believe that the Claimant would not have raised this at the same time as raising the first alleged threat given that they would support each other.

129. Finally, the Tribunal noted that JJ asked her partner to withdraw from the offer of employment with the Respondent to avoid any issue. The Tribunal does not consider this to be the action of someone who was seeking to use her partner to physically threaten the Claimant.

130. The Tribunal, therefore, finds no evidence that the second alleged threat was made by JJ.

131. This means that the fact found proven by the Tribunal is that, on 3 April 2020, JJ said to the Claimant, "*Yeah, I know you have but it's all going to come back round to shoot you in the feet*". The Tribunal does not consider that any reasonable worker would consider that that amounted to an actual threat to shoot the Claimant and it is clearly a use of the common idiom described above. Further, the Tribunal does not consider that, even if this was not meant as a literal threat to shoot someone, a reasonable worker would construe this phrase in the context in which it was said as a threat of some form of physical violence as the Claimant

has insisted it was throughout the internal grievance process and the Tribunal proceedings. At most, it is an indication that matters are not going to work out as expected by the Claimant.

132. The Tribunal finds that there was no detriment to the Claimant arising from what was said by JJ as her words could not reasonably be construed as threat of physical violence.

133. It follows from that the consequent matters do not amount to a detriment by the Respondent. The Claimant's absence from sick leave and loss of pay are alleged to have flowed from the alleged threats and where those either did not take place at all or would not have been considered to be a detriment by a reasonable worker then the consequent matters cannot amount to a detriment.

134. In particular, it was not being said by the Claimant that his absence on sick leave (and, therefore, his loss in pay) flowed directly from him making a protected disclosure. The causal chain between his sickness absence (and loss of pay) only connects to the alleged disclosure through the alleged threats. Once that link is removed then there is no connection.

135. The Tribunal, therefore, holds that the Claimant was not subject to any form of detriment by the Respondent arising from any alleged protected disclosure or otherwise.

<u>Was any detriment because the Claimant made a protected disclosure?</u>

136. Although this final question is entirely academic given the findings that there was no protected disclosure and no detriment, the Tribunal considered that it should still address this for the sake of completeness.

137. This issue hinges on the extent to which JJ could be said to have made the alleged threats because she knew the Claimant had made the alleged disclosure in his email of 1 April 2020. If she did not then, as a matter of pure logic, nothing she said on 3 April 2020 could have been because the Claimant made the alleged disclosure.

138. The Tribunal found that there was no evidence that PP had informed JJ of the existence, let alone the contents, of the Claimant's email of 1 April 2020. The

evidence of PP, which was not contradicted by any other evidence and which the Tribunal accepted as credible and reliable, was that she had only informed those she needed to inform about the Claimant's email for the purposes of investigating the matters which it raised. In particular, she denied informing JJ.

139. In this context, the Tribunal notes than when JJ was contacted to discuss the issue of her surname, she was informed that the information had come from Amazon employees and not any employee of the Respondent.

140. The evidence of JJ, which the Tribunal accepted as credible and reliable, was that she had not been informed of the email of 1 April 2020 but had been told by another employee, Alan Rooney, that the Claimant had been asking questions about her surname and was going to go to HR about it. It was this which prompted her to ask the Claimant, during their conversation on 3 April 2020, if he had spoken to PP and, when he confirmed that he had, to respond that she knew he had.

141. The Claimant produced no direct evidence that JJ was aware of his email, let alone had knowledge of its contents, on 3 April 2020. The whole basis of his case was predicated on the coincidence in timing between his email and the conversation. In effect, he sought to argue that the Tribunal should draw an inference that JJ had been informed of the alleged disclosure because, in the Claimant's mind, there could be no other reason for what she said on 3 April.

142. Whilst this conclusion may have been a potentially legitimate assumption on 3 April 2020, the evidence now available and heard by the Tribunal wholly undermines this and the Tribunal is not prepared to draw such an inference from the facts of the case as they are now known. In particular, there was an alternative explanation for what JJ said on 3 April which the Tribunal accepted as credible and reliable. Further, the direct evidence of JJ and PP establishes that neither the content nor even the existence of the Claimant's disclosure was provided to JJ on or before 3 April 2020. It is clear to the Tribunal that the Claimant has fallen into the trap of conflating coincidence with causation in circumstances where he did not have all the facts.

143. The Tribunal having found that JJ was not aware of the alleged disclosure then it also finds that she could not have said what she said on 3 April because the Claimant had made the alleged disclosure. In those circumstances, even if there had been a detriment to the Claimant arising from what JJ said then it could not be because he made any alleged disclosure.

Conclusion

144. The Tribunal having found that there was no protected disclosure, that, even if there had, the Claimant was not subject to any detriment and, in any event, not because he had made any protected disclosure then the Tribunal considers that the claim under s47B ERA is not well-founded and is hereby dismissed.

Employment Judge: Peter O'Donnell

Date of Judgment: 10th February 2021

Entered in Register: 19th February 2021

Copied to parties