Case Number 1307816/2019
Type V

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	AND	Respondent
Mr J Chiappe		**GKN Aerospace Services Limited**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL
(RESERVED JUDGMENT)**

HELD AT Birmingham **ON** 2 – 5 February 2021

EMPLOYMENT JUDGE GASKELL **MEMBERS: Mr S Woodward
Mr D Faulconbridge**

Representation
For the Claimant: **Mr I Wright (Counsel)**
For Respondent: **Mr P Michell (Counsel)**

JUDGMENT

The unanimous judgment of the tribunal is that:

BY THE DECISION OF THE TRIBUNAL

1 The claimant's claim that his dismissal was automatically unfair pursuant to Section 103A of the Employment Rights Act 1996 is not well-founded and is dismissed.

UPON THE CONCESSION OF THE RESPONDENT

2 The claimant's claim for unfair dismissal pursuant to Section 98 of the Employment Rights Act 1996 is well-founded and the claimant is entitled to an award of compensation.

3 There is an award in favour of the claimant payable by the respondent in the sum of £86444 in respect of the Compensatory Award pursuant to Section 118(b) of the Employment Rights Act 1996.

BY ORDER OF THE TRIBUNAL

4 The claimant's entitlement to a basic award pursuant to Section 118(a) of the Employment Rights Act 1996 together will any outstanding claims for breach of contract will be further considered at a **Closed Preliminary Hearing** (by telephone) before Employment Judge Gaskell (sitting alone)

on **16 April 2021** at 2pm with a time allocation of 1 hour and at a **Remedy Hearing** before the full panel on **29 June 2021** at 10am with a time allocation of 1 day.

REASONS

Introduction

1 The claimant in this case is Mr Jeremy Chiappe who was employed by the respondent, GKN Aerospace Services Limited, from 22 November 1993 until 15 August 2019 when he was dismissed. From late 2017 until 19 June 2019, the claimant's substantive role was General Manager (GM) at the respondent's Luton Branch. From 20 June 2019 until his dismissal the claimant had no substantive role. At the time of the claimant's dismissal, the reason for dismissal was unclear and it remains a contentious issue before this tribunal.

2 By a claim for presented to the tribunal on 15 October 2019, the claimant brings claims before the tribunal for unfair dismissal, including automatically unfair dismissal pursuant to Section 103A of the Employment Rights Act 1996 (ERA); unpaid wages; this and breach of contract.

3 Initially, it was the respondent's case this the claimant was dismissed for a substantial reason pursuant to Section 98(1) ERA; and that the claimant's dismissal was fair. But, by the commencement of the trial before us, the respondent had conceded that the claimant's dismissal was unfair and effectively consented to a judgement to that effect. The respondent had also agreed that the claimant was entitled to a Compensatory Award pursuant to Section 118(b) ERA in the maximum permissible amount of £86,444. Essentially what remained in dispute was whether or not the claimant was dismissed for having made protected disclosures pursuant to Section 103A ERA - if such was the case, then the cap on the amount of the compensatory award would be removed.

4 In addition to the issue set out in the preceding Paragraph, we were told by the parties that there remained a number of other areas of potential dispute: -

(a) The claimant's entitlement to a Basic Award pursuant to Section 118(a) ERA: at the time of dismissal, the respondent paid the claimant a sum equivalent to the basic award describing it as a "*Statutory Termination Payment*". The potential issue is whether or not this payment extinguishes the claimant's entitlement to a Basic Award.

(b) Initially, there was a dispute between the parties as to the effective date of termination of the claimant's employment: the respondent contended for 5 August 2019; the claimant for 15 August 2019. The claimant had been paid his salary only until 5 August 2019. The respondent now concedes

that the correct termination date is 15 August 2019; and that the claimant is therefore owed salary for a further 10 days. The precise figure has not expressly been agreed; but it ought to be a matter of simple arithmetic.

(c) There are elements in the claimant's pleaded case which suggest there is a breach of contract claim in respect of his pension entitlement. The parties are in discussion however as to whether what is claiming is actually part of his remedy claim.

5 The parties are confident that these matters can be resolved between them. They urged us to confine ourselves at this stage to the important issue of the reason for the claimant's dismissal. We agreed to this request and, having determined that issue, we have fixed a Remedy Hearing at which the remaining issues can be addressed if necessary.

6 On 15 June 2019, the claimant lodged two grievances: the first, against Mr Gavin Wesson – CEO of the respondent's Special Projects Group (SPG); the second, against Ms Estelle Maitland - Head of HR, SPG. It is the claimant's case that these grievances were Protected Disclosures pursuant to Sections 43A; 43B(1)(b) and 43C ERA. The claimant's case is that the making of either or both of these disclosures was the reason for his dismissal rendering it automatically unfair pursuant to Section 103A ERA. There is no claim for protected disclosure detriment pursuant to Section 47B ERA.

7 The respondent admits that the claimant raised the two grievances: the respondents case is: -

(a) That the grievances did not convey information which, in the reasonable belief of the claimant, disclosed information tending to show the matter required for the purposes of Section 43B(1)(b) ERA – namely, that an individual had failed, or was likely to fail, to comply with a legal obligation.

(b) That the claimant had no reasonable belief that the grievances were made "*in the public interest*" as required by Section 43B ERA.

(c) That in any event the claimant was not dismissed because of having raised the grievances or either of them.

These then, are the issues to be determined by the tribunal.

8 As the claim is only for unfair dismissal and there is no detriment claim, ordinarily, pursuant to Section 4(2) of the Employment Tribunals Act 1996, the claim would be heard by an Employment Judge sitting without Non-Legal Members. However, having had access to the Hearing Bundle, and having canvassed the views of the parties, I am satisfied pursuant to Section 4(5) of that Act that this is a case where it is desirable to sit as a full panel.

9 The burden of proof in this case is complex. Ordinarily, in an unfair dismissal claim where the dismissal is admitted, the initial burden is on the respondent to show what was the reason for the dismissal and that it was a permissible reason under Section 98(1) & (2) ERA. However, as the respondent in this case admits that the dismissal was unfair, it is arguable that the initial burden is removed. In a case pursuant to Section 103A ERA, there is an evidential burden on the claimant to establish a prima facie case that the reason for the dismissal was the making of a protected disclosure; and only if this evidential burden is discharged, is there then a burden on the respondent to establish an alternative reason. Suffice to say that the parties in this case are agreed that the respondent should present its case first.

10 The hearing was conducted remotely using the Cloud Video Platform (CVP). The panel; the advocates; the parties and the witnesses all attended from remote locations. The panel is grateful to the tribunal staff and to all concerned for the efficiency with which the hearing was conducted.

The Evidence

11 The respondent called two witnesses: Ms Maitland and Mr Steven Blair – who, at the material time, was the Chief Operating Officer of SPG; he was the claimant's Line Manager. The claimant gave evidence on his own account but did not call any additional witnesses.

12 In addition we were provided with an agreed Hearing Bundle running to approximately 680 pages. We have considered those documents from the Bundle to which we referred by the parties during the Hearing.

13 We found Ms Maitland and Mr Blair to be reliable and honest witnesses. They made concessions when it was proper to do so. Their evidence was internally consistent; they were consistent with each other; and their evidence was consistent with contemporaneous documents.

14 The claimant was a less satisfactory witness: he was prone to embellishment; exaggeration and obfuscation. He deflected questions when the obvious answer would have been inconvenient. He was firmly in denial regarding his own shortcomings - in particular regarding events leading to his removal as GM and as to his conduct in the days immediately following. His evidence was often speculative; and he engaged in quite outlandish conspiracy theories implicating others such as Mr James O'Sullivan (the claimant's successor as GM) when there was no evidence at all to support his assertions.

15 The basic facts of the case or not in dispute; but when there is a conflict of factual evidence given by the claimant and that given by Ms Maitland and Mr

Blair, we prefer the evidence of Ms Maitland and Mr Blair and we have made our factual findings accordingly.

The Facts

16 The claimant's employment with the respondent commenced on 22 November 1993. For almost 25 years he had an unblemished career working in senior positions in both finance and IT. He was based at the Luton factory, but at various times had some responsibility for other sites within the Group. On 1 April 2018, the claimant was appointed GM at Luton in succession to Mr Blair who had been promoted to become COO. The claimant was selected for the GM position by Mr Blair, and offered the role without competitive interview. At first the claimant became GM on a temporary basis but on 1 August 2018 he was confirmed in the role permanently. Mr Blair was the claimant's line manager. Mr Blair reported to Mr Wesson.

17 Contrary to the assertions of the claimant, there were concerns about the claimant's leadership and management abilities as a GM from very early on, certainly during the final quarter of 2018. These concerns were not seen as serious and Mr Blair was confident that with appropriate support the claimant would succeed in the role. It is however quite apparent that the claimant was blind to any shortcomings and did not take advantage of improvement opportunities offered to him. For example, there were suggestions that the claimant should receive leadership coaching and potential coaches were identified and suggested to him. It was also suggested that the claimant might benefit from a 360° appraisal allowing those who report to him to comment about his leadership. However, the claimant failed to engage with any of these suggested processes.

18 During the first quarter of 2019 the performance of the Luton branch was significantly down from expectations both in terms of its operational efficiency and its financial performance. Mr Blair was concerned at the claimant's lack of recognition of the problem and his lack of engagement with his team. By March 2019, the position had become critical: Mr Blair put in considerable resources, particularly his own time and effort to support the claimant, but Mr Blair was also under pressure from Mr Wesson to both account for, and to remedy the situation. The claimant also had a direct line of communication with Mr Wesson and was aware of Mr Wesson's concerns.

19 On 24 April 2019, there was a fire at the plant. This caused considerable disruption and inevitably exacerbated the existing production and financial problems. The claimant accepted in evidence however, that the disruption caused by the fire had been factored into the respondent's expectations. On 22 May 2019, there was a Performance Review at Luton when the claimant and his

team put together their plan for recovery. This included the claimant's forecast for financial performance to the end of May. However, when the May figures were known, just seven days later, the forecast proved to be wrong and very significantly so. For the first time, the claimant now acknowledged how serious the situation was. On 29 May 2019, the claimant wrote to Mr Wesson saying "*any remnant of credibility in my predictions is now lost*"; and later, "*I am very aware the persistent excuses for sales drop-off are totally unacceptable and we need to do something different*". On 31 May 2019, the claimant wrote to Mr Wesson saying "*I accept that I have not taken the necessary steps with sufficient urgency, being somewhat naïve to operations and allowing myself to believe that the state of things was not as bad as is now blindingly apparent*".

20 On 3 June 2019, Mr Wesson convened a meeting of the SPG management team at Luton to discuss the performance of the site and possible remedial action. Mr Blair was present; Ms Maitland was invited but she was absent on leave that day; the claimant was not invited. We have no doubt that this was an uncomfortable meeting for Mr Blair. Essentially, Mr Wesson was holding him responsible for the performance of the plant and of course it had been his decision the previous year to appoint the claimant as GM. We accept Mr Blair's account of that meeting, it was left to him to make relevant decisions and implement changes at Luton to reverse its decline.

21 On 5 June 2019, Mr Blair met with Ms Maitland and explained his decision to remove the claimant from post. Ms Maitland quite correctly explained to Mr Blair that there were risks in removing the claimant in this way without going through a performance management procedure. But, the decision was Mr Blair's; and Ms Maitland was happy to support him. They decided that Mr O'Sullivan would be appointed as interim GM following the claimant's removal.

22 On 6 June 2019, Mr Blair and Ms Maitland met the claimant and the claimant was advised that he was to be removed from his post as Luton GM. It was made clear that the claimant was not being dismissed from the respondent's employment; and that the intention was that alternative role would be found for him - most likely a finance role which fitted his known strengths. The claimant was understandably upset and angry at this development. But, his claim before us that he did not know why he was removed from his post is patently absurd.

23 Because he was so upset, the claimant advised to go home. And, from then until his eventual dismissal in August, he remained absent from the work place on special leave with full pay. With regard to the suggestion of an alternative finance role the claimant was invited to contact Mr Paul Hewitt – CFO for SPG to discuss his options. For reasons which the claimant did not explain, he did not contact Mr Hewitt and did not engage in the process of securing an alternative role. We accept there was some confusion as to the basis upon which

the alternative role was offered: the claimant was first told that the role would be on his existing terms and conditions but subject to review after a few months; later he was told that the role to be offered would be permanent. The true position was that the role offered would be permanent - but the terms and conditions may only be protected for a short period and subject to review.

24 In the days following the claimant's removal from his post, the claimant's behaviour was a cause for considerable concern: -

(a) On 7 June 2019, he visited the offices before office hours and left Post-it notes on colleagues computer terminals apologising that he could not "bring them cakes". In evidence the claimant agreed behaviour was rather childish.
(b) The same day he sent a general email to the staff at Luton in which he described himself as a "*sacrificial lamb to appease the gods*" and spoke of the SPG team who persisted in squatting on the Luton site in evidence the claimant agreed that the terms of the email were inappropriate.
(c) On 10 June 2019 the claimant sent an email to Ms Maitland claiming that he had "*been treated like a criminal*"; asking *"what you think you are doing? Have you taken leave of your senses? I feel like I am in a Kafka Kafkaesque nightmare.*" In evidence the claimant agreed the terms of his email were extreme and intimidating.
(d) On the same day the claimant sent an email to Mr Gordon Pitman and Mr Hans Buthker (respectively the Group Head of HR and the Group CEO), in which he described members of SPG (a clear reference to Mr Blair and Ms Maitland) "*running scared*" of Mr Wesson. He stated that Mr Wesson was lashing out in a desperate attempt to protect his own reputation. In later emails to Mr Pitman the claimant was pressing for a satisfactory resolution to his position; threatening to engage a barrister.
(e) The claimant sent an intimidating text message to Mr Blair urging him to "come clean" when Mr Buthker came asking questions. In evidence the claimant gave what we find to be a rather fanciful explanation this text message was sent out of concern for Mr Blair.

25 On 14 June 2019, the claimant had a meeting with Mr Simon Tennant - Head of Global Mobility. They discussed the claimant's position and possible future options which included the termination of his employment on agreed terms. In evidence, the claimant indicated that at that stage he was not interested in pursuing a new role in finance.

26 on 15 June 2019 the claimant raised to formal grievances one against Mr Wesson; the other against Ms Maitland. It is these grievances which are alleged by the claimant to be protected disclosures.

27 The core point of the grievance against Mr Wesson was the assertion that he had bullied Mr Blair and Ms Maitland into doing what he wanted namely the removal of the claimant. There were several other assertions which comprised what, in our judgement, were simply vague allegations, not "information" -"*an aggressive call*"; "*shut down*" etc. finally the claimant suggested that Mr Wesson had a history of bullying others but in evidence the claimant accepted that he had no details to support this allegation. We accept Ms Maitland's evidence that there had never been previous complaints of bullying against Mr Wesson of.

28 The substance of the grievance against Ms Maitland was that she had somehow permitted the claimant's removal from his post as GM without first conducting a rigorous performance management process. The grievance also contains some general allegations, such as "*this was not a performance management issue anyway, but a scapegoating, an action to save someone's skin*." and "*it was a humiliating process being treated as if I were a criminal*".

29 On 18 June 2019, the claimant pursued further correspondence with Mr Pitman - describing Mr Blair's actions in removing him from his post as "*kangaroo court style*".

30 On 21 June 2019, Mr Pitman wrote to the claimant acknowledging his formal grievances and advising as to the procedure which would be followed. As the claimant had raised grievances against both a senior SPG manager (Mr Blair) and against a member of the HR leadership team (Ms Maitland) the claimant was advised that the grievance would not be run by the HR function as would normally be the case but would be investigated independently by Mr Andre Hermsen - Head of Risk and Compliance and Ms Hilary Kindelan - UK Legal Team. In evidence before us the claimant acknowledged that Mr Hermsen and Ms Kindelan were entirely independent.

31 For the purposes of their investigation, Mr Hermsen and Ms Kindelan interviewed the claimant; Mr Wesson; Mr Blair; Ms Maitland; Mr O'Sullivan and Ms Mandy Cawley – HR Manager, Luton. During her interview, Ms Crawley referred to her concerns as to the claimant's leadership style which she felt had contributed to the unsatisfactory performance at Luton. She also spoke of having encouraged the claimant to take steps to improve his leadership and had made suggestions.

32 On 12 July 2019, Mr Hermsen and Ms Kindelan wrote to the claimant setting out in some detail their findings with regard to his grievance and concluding that the grievance was not justified and therefore not upheld. Significantly, the outcome letter recorded that the claimant had rejected the proposal of a new role in finance. The claimant did not seek to correct this

understanding. The claimant was afforded a right of appeal against the outcome but this was not pursued.

33 Notwithstanding that the claimant did not pursue an appeal, he did not accept the outcome either. He wrote two emails to Mr Hermsen and Ms Kindelan challenging their findings; and he continued his correspondence with Mr Tennant.

34 Of more concern to the respondent, is the fact that, upon becoming aware of what Ms Cawley had said to the investigation, the claimant sent a highly intimidating text message to her. This was sufficiently upsetting for her to report the situation to Ms Maitland - who considered removing the claimant's company mobile telephone from him. (At this stage, although not working, the claimant was still employed by the respondent.)

35 On 24 July 2019, the claimant wrote to Mr Tennant and Mr Hermsen indicating that he was still awaiting final justification for Mr Blair for the decision to remove him from post. He indicated that he required closure on this in order that he could consider his options. An arrangement was made for the claimant to meet Mr Blair and Mr Tennant on 31 July 2019.

36 At that meeting, it is evident that the claimant's principal concern was to argue about the correctness or otherwise of the decision to remove him from his GM role. We have read the transcript of the meeting, the claimant clearly had not accepted the outcome of the grievance; and was insistent on looking back over the events which had happened rather than forward as to what his new relationship with the respondent might be. Mr Blair explained to the claimant, and we accept his evidence on this, that on 6 June 2019 the intention had been to retain the claimant within the business in a role more suited to him than the GM role. However, Mr Blair explained that there were now some difficulties arising from the claimant's behaviour after his removal. In particular, his email to staff on 7 June 2019. It is the claimant's case that, at the meeting he was told that the finance role was no longer available. As we have previously observed, there is evidence to suggest that the claimant earlier indicated that he was not interested in pursuing that option – and certainly he had not engaged with Mr Hewitt as requested. Following the meeting, the claimant exchanged emails with Mr Wesson in which he was asking to be given a consultancy role in accounts. Mr Weston's decision was that no such role was available. having reached an impasse, Mr Blair concluded that the only remaining option was to terminate the claimant's employment.

37 On 1 August 2019, the claimant raised a grievance against Mr Blair. The grievance was addressed to Mr Pitman. The following day Mr Pitman responded indicating that he was not prepared to consider a separate grievance against Mr

Blair - since much of it was a rerun of the earlier grievance which had already been determined independently.

38 On 5 August 2019, the claimant sent an email to Mr Buthker: this time accusing Mr Pitman of implicating himself in a "*conspiracy to pervert the course of justice*".

39 On 6 August 2019, the respondent prepared a letter purporting to terminate the claimant's employment effective from the previous day. Curiously, the letter was not posted until 14 August 2019. The respondent now accepts that the effective date of termination is 15 August 2019 when the claimant received the letter.

40 The claimant was paid an appropriate sum in lieu of notice; all accrued holiday pay and the sum of £13,650 described in the letter as a *statutory termination payment*. The statutory termination payment was calculated in the same way as a basic award for unfair dismissal. The dismissal letter indicated that the reason for the dismissal was "*some other substantial reason*" but did not indicate what that reason was. The claimant was not afforded a right of appeal against his dismissal.

The Law

41 **<u>The Employment Rights Act 1996 (ERA)</u>**

Section 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.]

Section 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.

Section 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 in good faith—

(*a*) to his employer

Section 103A: Protected disclosure

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.

42 **Decided Cases**

Cavendish Munro –v- Geduld **[2010] IRLR 38 (EAT)**
Smith –v- London Metropolitan University **[2011] IRLR 884 (EAT)**
Goode –v- Marks & Spencer Plc **UKEAT/0442/09**
Kilraine v London Borough of Wandsworth **[2018] EWCA Civ 1436 (CA)**

The making of a protected disclosure must involve the disclosure of **information**; this involves the communication of **facts**. It is not sufficient merely to make allegations, to raise grievances about working conditions or simply to state an opinion.

Darnton –v- University of Surrey **[2003] IRLR 133 (EAT)**
Babula -v- Waltham Forest College **[2007] IRLR 346 (CA)**
Korashi –v- Abertawe Bro Morgannwg University Local Health Board **[2012] IRLR 4 (EAT)**

In order to bring a claim in respect of a protected disclosure it is sufficient that the employee reasonably believes that the matter he relies upon amounts to a relevant failure even if it turns out that this belief is wrong. What is important is the employee's reasonable belief in the factual basis for the disclosure. There are both objective and subjective elements to the question of whether a belief is reasonable. An uninformed lay person may reasonably believe that a set of circumstances suggest a relevant failure; whereas an expert may realise that

further information would be required before such a conclusion was reasonably available.

Eiger Securities LLP v. Korshunova **[2017] IRLR 115 (EAT)**
Fincham v. HM Prison Service **EAT/0925/01 (EAT)**

As regards failure to comply with a legal obligation, 'legal' must be given its natural meaning. Hence a belief that an employer's actions were morally wrong, professionally wrong, or contrary to its own procedures, may well not be sufficient Not every work issue complaint can amount to 'breach of legal obligation.

Chesterton Global Ltd v Nurmohamed **[2017] IRLR 837 (CA)**

The Court of Appeal acknowledged that the purpose behind the amendments in 2013 to ERA was to protect disclosures in the *public interest*, not just to provide another vehicle for essentially private grievances. That was why the 'public interest' element was expressly added.

Four factors were identified to be considered in determining whether a disclosure was in the public interest:

(a) The numbers in the group whose interests the disclosure served;
(b) The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
(c) The nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;
(d) the identity of the alleged wrongdoer: the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest – though this should not be taken too far.'

A disclosure which is in the private interest of a worker making it does not become in the public interest merely because it serves the private interests of a number of other workers as well.

Parsons v. Airplus International Ltd **UKEAT/0111/17 (EAT)**

The claimant made a series of allegations that in principle could have been protected disclosures but in fact were made as part of a disciplinary dispute with

the employer, the EAT held the ET was entitled to rule that the disclosures were only made in self-interest, and thus that the whistle blowing dismissal claim could rightly be rejected.

Ibrahim v. HCA International **[2020] IRLR 224 (CA)**

The mental element contained in s.43B ERA comprises a two stage test: (a) did the claimant have a subjective genuine belief that the disclosure was in the public interest; and (ii) if so, did he or she have objectively reasonable grounds for so believing? This is a two stage test, which the ET must follow, and the two stages ought not to be elided.

Kuzel v Roche Products Ltd **[2008] EWCA 380(CA)**

(a) In making a finding as to the reason for the dismissal, it is for the Tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.
(b) If the employer fails to show that the reason for dismissal was the reason that he asserted it was, the tribunal may find that the reason was that asserted by the employee, but need not do so.
(c) The tribunal may find, on a consideration of all the evidence in the particular case, that the true reason for the dismissal was not that advanced by either side.
(d) There is no legal burden on the employee to prove that a protected disclosure was the reason for his dismissal.

The Claimant's Case

43 put simply the claimant's case is that there was an obvious change of heart on the part of the respondent between 6 June 2019 when the claimant was removed from post but assured that he would be found an alternative role and 6 August 2019 when he was dismissed the claimant invites us to infer that the reason for the change of heart was the grievances raised on 15 June 2019.

44 The claimant submits his grievances convey information tending to show the following breaches of legal obligations: -

(a) On four occasions Mr Wesson adopted threatening, aggressive and bullying behaviour towards him.
(b) Mr Wesson bullied Steve Blair to remove the claimant from his post.
(c) Ms Maitland was party to that decision and as HR Officer did not follow any performance management procedure when the claimant was removed from post.

45 The claimant submits these disclosures are much more than generalised allegations of inappropriate behaviour and qualify as ‘information.’

46 The claimant submits his disclosures concerned both his personal treatment and also raised matters outside his own contract of employment. He grieved because he wished to complain about his own treatment but also on behalf of others who might be treated similarly but felt unable to complain. So they were wider than his private interests and the claimant submits were made in the public interest.

The Respondent’s Case

47 The respondent’s case, is that there is simply no basis upon which the tribunal can reasonably conclude that the reason for the claimant’s dismissal was the fact of him having raised the grievances. The respondent dealt with the grievances in an entirely appropriate fashion having them investigated independently as a very senior level. The respondent’s case is that the claimant having rejected the offer of an alternative role (or at the very least having failed to engage with Mr Hewitt), it was left with no choice other than to terminate the claimant’s employment. The respondent admits that this termination was an unfair dismissal and has offered to pay compensation at the maximum amount.

48 The respondent also submits that the grievances simply do not convey information tending to show a breach of a legal obligation. Nor that there is any basis upon which it could be said that the grievances are made in the public interest rather than in the claimant’s private interest only.

Discussion & Conclusions

49 In view of the respondent’s concession it is unnecessary for us to make a finding. But, we have no hesitation at all in recording our view that the claimant was very badly treated. His dismissal was clearly unfair by reference to the standards of fairness required by Section 98 ERA. But, as recorded earlier that is not the issue which we have to determine. This

Protected Disclosures

Information

<u>The Grievance against Mr Wesson</u>

50 Essentially, this is an allegation of bullying by Mr Wesson against Mr Blair and Ms Maitland. There is also reference to Mr Wesson having bullied the claimant and others. What the claimant does not appreciate however is that no

matter how specific the timeline of events, if he merely alleges *bullying* or *aggressive* or *threatening* behaviour, these terms themselves are generalisations. They mean different things to different people. And the claimant simply did not provide information as to precisely what Mr Wesson said or did.

51 On the evidence before us, the claimant could have no reasonable belief that Mr Wesson had bullied others - because the evidence was that there had never been a complaint of bullying against him. The claimant was quite unable to identify any reliable source of information.

52 The bullying of Mr Blair and Ms Maitland was nothing more than speculation on the claimant's part. He had no basis to conclude that they had been bullied especially as they have consistently denied this to be the case. The claimant was not present at the meeting on 3 June 2019 when this bullying took place – Ms Maitland was not there either.

53 In any event, short of physical threats, bullying is not of itself a breach of a legal obligation.

54 Our conclusion therefore is that the grievance against Mr Wesson did not disclose information which in the claimant's reasonable belief tended to show the breach of a legal obligation.

The Grievance against Ms Maitland

55 Essentially, this was to the effect of the Ms Maitland had not put the claimant through a performance management process before his removal from office as GM. But the fact is that Ms Maitland was an HR officer; it was not her responsibility (even if such a legal obligation existed) to put the claimant through a performance management process. That would be the responsibility of his line manager - Mr Blair. All Ms Maitland can do is to give HR advice and guidance; the claimant had no information from which he could conclude that she had not done this.

56 Accordingly, there is no basis whatsoever upon which we can conclude that the grievance against Ms Maitland disclosed information tending to show the breach of a legal obligation.

Public Interest

57 The claimant's grievances were clearly raised as part of his campaign to attack the justice of his removal from office as GM. We do not accept that there was any wider public interest; nor that the claimant had any reasonable belief in the same. The claimant's reference to "*my boss has reverted to his old bullying*

ways" is unpersuasive bearing in mind the claimant's failure at any earlier time to complain about Mr Wesson's behaviour. The claimant's suggestion that those weaker than him "*were unable to withstand Mr Wesson's abusive threatening approach to management*" is clearly a reference only to Mr Blair and Ms Maitland whom the claimant believed had removed him from post at Mr Wesson's insistence. We do not accept that these words were used out of wider concern for the claimant's former colleagues.

58 There was no public interest element to these grievances. And the claimant had no reasonable belief that he was serving the public interest.

59 Accordingly, it is our conclusion that the grievances raised by the claimant on 15 June 2019 were not protected disclosures.

Causation

60 Our finding that the claimant did not make any protected disclosure is sufficient to dispose of this case absent a protected disclosure there can be no automatic unfair dismissal caution to Section 103A ERA. But having heard the relevant evidence we have nevertheless considered the question of causation of the claimant's dismissal.

61 The reason for the claimant's dismissal was never properly articulated by the respondent. There is no doubt in our minds as to the reason for the claimant's removal from post as GM - the respondent had concluded that the claimant was simply failing in his leadership responsibilities. We entirely reject the claimant's assertions that he dis not understand the reasons for this. The issue we have to decide is what led to the change of heart between 6 June 2019 when the intention clearly was to retain the claimant in an alternative role and 6 August 2019 when the decision was to dismiss him.

62 In our judgement, the reason for this change of heart was the claimant's attitude and behaviour following his removal. The respondent was entitled to expect that, once the claimant's grievance had been properly investigated and adjudicated upon, his attitude would be more positive this but this was not the case. The claimant would not accept the outcome of the grievance but continued to challenge it. At the meeting on 31 July 2019, the claimant simply wished to concentrate on those same issues again; the claimant acted in an intimidating way towards Ms Cawley after the grievance outcome; and at no stage did he engage with Mr Hewitt with regard to an alternative role in finance.

63 We conclude that, by the end of the meeting on 31 July 2019, the respondent had simply concluded that there was no way that it would be possible

to move forward in a positive way by the claimant's re-engagement. The appropriate way forward was therefore to terminate his employment.

64 Of all that happened after the claimant's removal from post as GM, we find that the claimant's grievances were of least concern to the respondent. By raising the grievances, the claimant was behaving appropriately. This contrasted with so much inappropriate behaviour. The respondent dealt appropriately with the grievances: they were investigated by very senior individuals who were completely independent of what had happened. The respondent was entitled to expect that following the investigation and the outcome the claimant would have responded more positively in terms of his future with the organisation.

65 Accordingly we find that the grievances raised by the claimant on 15 June 2019 were not any part of the reason for his later dismissal.

66 For these reasons, the claim for automatic unfair dismissal pursuant to Section 103A ERA is not well-founded and is dismissed.

Employment Judge Gaskell
8 March 2021