EMPLOYMENT TRIBUNALS

Claimant: Mr S Buchanan

Respondent: Moore Kingston Smith Group Services Limited

Heard at: by CVP **On: 28 May 2021**

Before: Employment Judge N Walker

Representation
Claimant: in person
Respondent: Mr P Strelitz of Counsel

RESERVED JUDGMENT

The Claimant's claim that he made a sixth disclosure when Lucian Burcea disclosed information to him about work for Big Wave media is struck out.

REASONS

1 Both the Claimant and the Respondent made applications for a strike out and in the case of the Respondent also a deposit order in relation to the other side's claims. The Claimant discussed the matters with me at the outset of the hearing and as a result of that discussion, he withdrew his applications at this hearing.

2 The Respondent pursued their application for strike out addressing all but one of the alleged disclosures in turn.

First disclosure

3 The Respondent argues that the Claimant's first disclosure cannot, on its face, meet the requirements for a public interest disclosure and that it should be struck out.

4 The disclosure is identified in the Claimant's protected disclosure schedule as the Claimant disclosing that he was working over 60 hours a week in contravention

of the Working Time Regulations 1998, presenting a health and safety risk. The Claimant says this was made by email and in person verbally.

5 I was referred by the Respondent to emails sent by the Claimant in which he raises the 60 hours he is working per week. The Respondent argues that it is clear from those emails that the context of the discussion was the Claimant's effort to demonstrate his value to the Respondent and not a complaint. As there is at present some concern on the part of the Claimant that not all the relevant emails have been disclosed, I am not prepared to strike out this part of the Claimant's claim.

Second Disclosure

6 The Respondent simply seeks to strike out the assertion that the Claimant made disclosures by email in relation to the second disclosure matter. The Respondent says no emails have been found. In the light of the Claimant's concern that disclosure has not been completed fully, I am not prepared to strike out this part of the Claimant's claim.

7 The Respondent accepts the Claimant is entitled to assert that there were oral conversations on the topic of the second disclosure and they do not seek to strike that out, but will defend it, as they accept they are matters which ought properly to be determined at a final hearing. I do not think the extra time involved in addressing the question of emails, even if it turns out there are none, would be very significant at all and it is more appropriate that this entire assertion is addressed at the full merits hearing.

Fourth Disclosure

8 To the extent that the Claimant asserts that Lucian Burcea made disclosures to the Respondent, he is not a party to these proceedings and protected disclosures have to be made by the employee claiming to have been unfairly dismissed. There appears to be some confusion on the Claimant's part in this regard.

9 There is no requirement to strike out any part of this assertion as the Respondent accepts that, while they defend the matter, the Claimant's assertions regarding his own disclosures should be considered at a full merits hearing.

Fifth Disclosure

10 The Respondent asserts that the fifth allegation is said to have been made in email and WhatsApp traffic as well as phone calls but there is no record of such emails or Whatsapps around the time identified. Additionally, the Respondent argues that this is not a disclosure of information in the public interest and rather a request for a course of action to be adopted and that it does not amount to a protected disclosure.

11 I note that if there were WhatsApp messages, the Claimant should have them himself. However, there is an issue over email disclosure.

12 The Claimant believes that the executive on the Respondent's management was not upholding or executing his legal obligations because he misunderstood

them and that he did point this out. At present the content of the alleged disclosure situation is not clear to me and I am not prepared to strike it out.
Berry

Sixth Disclosure

13 The Claimant alleges that Lucian Burcea made a protected disclosure to the Claimant. The Claimant seeks to rely on section 103A of the Employment Rights Act which protect employees who are dismissed, where the principal reason for the dismissal is that the employee made the protected disclosure. Section 103 a requires the Claimant to have made the disclosure. The Claimant referred me to the case of Billsborough v Berry Marketing Services 1401692/2018 which was a case where an employment tribunal was prepared to apply the protection to a situation where the Respondent was aware that the Claimant in that case was researching how to report a matter to the relevant regulator, but had not actually done so. In that case, applying human rights legislation, the employment tribunal concluded that it was entitled to consider a scenario where there was a concern that the Claimant might make a protected disclosure in the same way as one where the Claimant had made a protected disclosure. That is not a decision which is binding on me. The circumstances were specific, and the human rights legislation was considered in detail. In this case, the Claimant merely alleges there was a possibility the Respondent was concerned that he might do something in the light of Lucian Burcea's disclosure to him, but it requires considerable extrapolation to reach that conclusion. In my view the circumstances are very different. On the face of it this is not a disclosure made by the Claimant and it must be struck out.

Seventh Disclosure

14 In this case the Respondent again argues that the aspects of the Claimant's assertion that he emailed about a certain failure should be struck out. The Claimant also alleges there were oral disclosures made and the Respondent concedes those are properly matters for consideration at the final hearing although they do not make any admissions in respect of it. Their argument is that no emails have been found. For the same reasons as I have given in relation to other alleged disclosures, there is the possibility that some further specific disclosure may be located and even if it is not, the amount of time taken up by the Tribunal considering whether there was a disclosure in an email, particularly if no email is in fact located, in addition to the oral disclosures, is minimal and I will not strike it out.

Eighth Disclosure

15 This relates to the Claimant's assertion that he discovered that the Respondent was making errors in training employees with regard to certain data protection issues. The Respondent argues that because, in the list of issues, the Claimant has said that this might lead to legal errors in the future, that is not sufficient given the wording in section 43.

16 I note that in the Claimant's PID Schedule, he specifically says "erroneous interpretations of GDPR are likely to lead to unlawful processing of personal data and the infringement of individual rights. The Claimant is a litigant in person, and he would not readily have understood the difference in terminology between the words might and likely. In those circumstances the wording "likely" in his PID Schedule should be re-instated in the list of issues, rather than the alternative wording "might".

17 Insofar as the Respondent also argues that there are no emails, for the reasons I have given before, there is remains a possibility that there might be further specific disclosure. The actual time involved in the tribunal considering that extra possibility is minimal, and I will not strike it out.

Employment Judge N Walker

1 June 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

01/06/2021.....

.....
FOR EMPLOYMENT TRIBUNALS