



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Prestalo

**Respondent:** Switch UP CIC

**Heard at:** Nottingham

**On:** 28 April 2021

**Before:** Employment Judge Butler (sitting alone)

## JUDGMENT

The Judgment of the Tribunal is that the following documents are disclosable in these proceedings:

1. The Claimant's bullying grievance against his former employer;
2. His letter to his former employer dated 18 November 2015;
3. His settlement agreement with his former employer; and
4. His whistleblowing letter to his previous employer dated 21 January 2016.

## REASONS

### Background

1. This judgment has been made on the papers which comprise the written submissions of the parties. It was agreed at the preliminary hearing before me on 12 February 2021 that this course of action was agreed and would be taken.
2. The background to this hearing is an application by the Claimant in respect of matters set out at clause 5 of the case management summary arising from the above hearing. In that summary, I recorded as follows:

**When examining the Claimant's hard drive, the Respondent had discovered a settlement agreement he had entered into with a previous employer. He claims it is confidential and privileged and the Respondent shows a pattern**

**of conduct by him which goes to whether he had a reasonable belief in the matters raised as protected disclosures.**

3. I am grateful for the detailed submissions of the representatives which I have considered fully, including the authorities mentioned therein.

4. Unsurprisingly, the parties' views on this matter are diametrically opposed. The Claimant submits that the documents listed above are variously confidential, privileged and irrelevant to the current proceedings. The Respondent submits the documents will show the Claimant did not act in good faith as he has acted in very similar fashion in relation to a previous employer; he acted in his own financial interest rather than the public interest; and he did not reasonable believe the disclosures made to the Respondent.

4. The Respondent also claims the Claimant is a vexatious litigant. For the record, I do not consider he falls within the definition as this is only his second issue of this kind with an employer, at least as far as is known and established.

5. I have considered the following matters to be of importance:

5.1 The Claimant kept private documents and correspondence on the Respondent's computer system.

5.2 There is no suggestion that the Respondent was looking for private documents only documents it maintains the Claimant deleted which were relevant to the Respondent's business.

5.3 There is no suggestion that the documents were password protected by the Claimant.

5.4 The submissions do not explain why the Claimant chose to store the documents in this way.

6. I have considered the following legal principles:

6.1 Whether this evidence is logically probative of some matter which requires proof (O'Brien) and is not too marginal.

6.2 Whether the documents are relevant to the Claimant's credibility (Fox).

6.3 Whether the fact that the documents are confidential justifies non-disclosure (Canadian Imperial Bank of Commerce).

6.4 Whether the Respondent's retrieval of the documents was unlawful.

6.5 Article 8(2) ECHR regarding private life.

7. I have also taken account of the judgment in **Simpkin v The Berkeley Group Holdings PLC [2017] EWCH 1472 (QB)**.

8. I consider the documents to be relevant to the issue of good faith which, in turn, may be reflected in any compensation awarded to the Claimant. The documents may also be relevant to credibility. Having said that, disclosing the documents is not an opportunity for the Respondent to examine the merits or

otherwise of a settlement agreement. Calling witnesses to that effect, from both sides, is unnecessary in my view.

9. I see no reason why the documents should not be disclosed because they are marked as being confidential. If they are relevant to the proceedings, which I find they are, they should be disclosed.

10. The Claimant has not established that the retrieval of the documents by the Respondent was unlawful. There is no indication before me that they were separated from the Respondent's documents, for example, by being marked as confidential, password protected and/or in a separate folder. The Respondent is entitled to examine its own hard drive.

11. I cannot see that there is any breach of the Claimant's right to respect for his private life. Given my comments in clause 10 above, he seems to have decided himself that the documents relating to private matters should be kept on the Respondent's system during the time he was employed. If the Respondent then discovers the documents while carrying out a lawful exercise, there is no breach of Article 8. There is reference before me to medical matters being discovered in relation to the Claimant's wife. Again, quite why he would store these where he did is a matter for him but, in any event, they have nothing to do with this case and I do not order them to be disclosed, nor does the Respondent seek to disclose them.

12. The Claimant has made an application for wasted costs in relation to having to make written submissions. His solicitors say they sent the hearing bundle to the Respondent's solicitors and they should have ensured that their counsel, Ms Johns, had received them. The fact that she had not was the reason why submissions were ordered to be made.

13. I dismiss the application for wasted costs. It appears that the bundle was only sent to the Respondent's solicitors and the Tribunal on the day before the last hearing. This is too late and, whatever the reason for Ms Johns not receiving a copy of the bundle, it is not surprising that she did not.

14. It is very clear to me that this case has prompted emotions to run high, not just for the parties themselves, but also their representatives. Proceedings in the Tribunal should be conducted properly and in accordance with the overriding objective. This case seems to be taking up a lot of judicial time when the Tribunals are very busy. The parties must comply with orders in a timely fashion.

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Employment Judge Butler

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Date 28 April 2021

