EMPLOYMENT TRIBUNALS

Claimant: Mr M Lynn

Respondent: First Response Group Limited

Heard at: Leeds (video hearing by CVP) **On:** 19 October 2021

Before: Employment Judge Knowles

Representation
Claimant: In person
Respondent: Mr Holmes, Consultant

RESERVED JUDGMENT

1. The Claimant's claim of ordinary unfair dismissal is dismissed because the employment tribunal does not have jurisdiction to hear that complaint by reason of the provisions of Section 108(1) of the Employment Rights Act 1996.

2. The Claimant's application to amend the claim is refused.

3. The Claimant's remaining claim (unlawful deduction from wages) shall be set down for a video hearing before Judge sitting alone with an estimated length of hearing of one day.

RESERVED REASONS

Issues

1. The issues listed for hearing today are:

   1.1. Whether to allow any application made by the Claimant to add a claim for automatically unfair dismissal (protected disclosure).

   1.2. As a preliminary issue, whether the Claimant has sufficient service to bring a claim for ordinary unfair dismissal, and if not, whether to dismiss the claim for lack of jurisdiction.

Evidence

2. This was a fully remote hearing undertaken using HMCTS's Cloud Video Platform. No connection or other technical issues were encountered during the hearing.

3. I heard evidence from the Claimant who produced a written witness statement.

4. On behalf of the Respondent, I heard evidence from Mr S Alderson who is the Respondent's CEO. Mr Alderson produced a written witness statement.

5. Both witnesses affirmed that their evidence was the truth.

6. The parties produced a joint bundle of documents, 197 pages. Reference in this judgment and reasons to numbers in brackets are to page numbers in the joint bundle of documents.

Presenting history

7. On 25 February 2021 the Claimant lodged an employment tribunal claim (1-12) stating that he was employed from 7 January 2019 to 31 January 2021 as Group Operations Director for the Respondent. He ticked the boxes at part 8.1 of his claim form (6) indicating that he was unfairly dismissed, was owed holiday pay, notice pay and other payments. He also ticked the box indicating that he was making another type of claim, and in the box below when asked to state the nature of the claim he wrote "constant and ongoing wage deductions, removal of benefits, reputation all damage and loss of wages and pension".

8. In box 8.2 (7) the Claimant describes a meeting on 12 November 2020 at which Mr Alderson, the Respondent's CEO, terminated the Claimant's employment. The Claimant wrote that he believed he was targeted due to the complaints he had raised with the owner Mr Tahlil. He ended that form "I have continued on another sheet and have uploaded it to this file:"

9. The tribunal received no uploaded file or attachment to the claim form. The Claim was accepted and served on the Respondent within a combined notice of claim and notice of hearing, listing the matter for hearing on 25 June 2021 for one day.

10. No representative is listed on the claim form as acting for the Claimant. The Claimant is a litigant in person.

11. The Respondent entered a response to the claim (undated, 13-24). The Respondent explains that they are "a medium sized limited company in the business of providing security, and risk management services and employs approximately 200 people across the UK".

12. The Respondent states that the Claimant was dismissed upon one months' notice on 12 November 2020 meaning that his effective date of termination of employment was 12 December 2020. The state that there is a jurisdictional issue in the unfair dismissal claim, the Claimant having commenced employment 8 January 2020 lacks the requisite 2 years continuous employment to bring an ordinary claim of unfair dismissal.

13. The Respondent further denies the claim of unfair dismissal and the claims for other payments.

14. The parties have issues preparing the bundle for the hearing, the Claimant requesting documents be added which the Respondent said were not relevant to his claims.

15. A telephone preliminary hearing for case management is therefore listed for 28 May 2021 and was heard by Employment Judge Buckley.

16. During that hearing the absence of the attachment to the claim form comes to light. The hearing listed for 25 June 2021 was vacated. As can be seen from the issues

above, the missing attachment to the claim form was asserted to set out the Claimant's claim for automatically unfair dismissal (protected disclosure).

17. Directions were made for the Claimant to make an application to amend and submit the text of the proposed amendment. Guidance was given in relation to the former in outlining the Selkent factors that the tribunal would have regard to.

18. In relation to setting out the proposed amendment, the Claimant is ordered to "set out the details of the protected disclosures relied on (what was said, by whom and when) and bear in mind that the issues that the tribunal will need to determine in a claim for automatic unfair dismissal (protected disclosure) are like to be:

    1.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

        1.1.1 What did the claimant say or write? When? To whom? The claimant says s/he made disclosures on these occasions:

            1.1.1.1 [date] – [in an email to her line manager];

        1.1.2 Did s/he disclose information?
        1.1.3 Did s/he believe the disclosure of information was made in the public interest?
        1.1.4 Was that belief reasonable?
        1.1.5 Did s/he believe it tended to show that:

            1.1.5.1 [a criminal offence had been, was being or was likely to be committed;
            1.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
            1.1.5.3 a miscarriage of justice had occurred, was occurring or was likely to occur;
            1.1.5.4 the health or safety of any individual had been, was being or was likely to be endangered;
            1.1.5.5 the environment had been, was being or was likely to be damaged;
            1.1.5.6 information tending to show any of these things had been, was being or was likely to be deliberately concealed.]

        1.1.6 Was that belief reasonable?

19. The matter then appears before me today.

Evidence and findings of fact

20. I made the following findings of fact on the balance of probabilities.

21. There are no significant factual disputes of any relevance to the issues before me today.

22. The witness statements contain a great deal of evidence concerning the discussion between Mr Alderson and the Claimant on 12 November 2020. I have seen an email purportedly sent by the Respondent to the Claimant on the following day (66) and a subsequent email from the Claimant dated 23 November 2020 complaining that he has not heard anything further since the meeting on 12 November 2020. I have seen wage slips going forwards to February 2020 which refer to the Claimant as being on garden leave (57-78). I have been referred to a P45 (79), which purports to have been issued 26 March 2021 and records the Claimant's leaving date as 2

December 2020.

23. The evidence before me does indicate a very confused path concerning the Claimant's pay and how the end of his employment was processed by the Respondent and when.

24. However, Mr Alderson has given evidence under oath that when he met with the Claimant on 12 November 2021 he advised the Claimant that his role was no longer required and that they were "giving him his 1 months' notice effective immediately".

25. The Claimant accepts that he was dismissed during this meeting. The Claimant told me in evidence that he cannot precisely remember what Mr Alderson told him but that it was possible that he was told he was being given 1 months' notice immediately.

26. The Claimant did not challenge the Mr Alderson's account of their conversation save for a point concerning whether or not the Respondent had appointed a successor Operations Director.

27. The Claimant has not challenged Mr Alderson's account of their conversation on 12 November 2020.

28. On the balance of probabilities, I find that on 12 November 2021 Mr Alderson advised the Claimant that his role was no longer required and they were "giving him his 1 months' notice effective immediately".

29. I have seen an email purportedly sent by the Respondent to the Claimant on the following day (66) and a subsequent email from the Claimant dated 23 November 2020 complaining that he has not heard anything further since the meeting on 12 November 2020. The parties appear to be in dispute over whether or not the email on 13 November 2020 was ever sent.

30. I note however that on the Claimant's account, assuming he never received the 13 November 2020 follow up email, his 23 November 2020 records his understanding that:

    1. A very good reference would be provided, due to the great work I had done.

    2. I would receive a month's notice as well as of all outstanding holiday pay, outstanding expenses.

    3. I would after this payment receive a payment equal to or greater than my two months salary in support of finding another job.

31. In my conclusion the Claimant therefore both accepts Mr Alderson's account of their discussion and clearly understood that he had been dismissed on one month's notice on 12 November 2020.

32. The reference to a supplementary payment thereafter to help bridge the Claimant into new employment is not relevant.

33. I have seen wage slips going forwards to February 2020 which refer to the Claimant as being on garden leave (57-78). I have been referred to a P45 (79), which purports to have been issued 26 March 2021 and records the Claimant's leaving date as 2 December 2020.

34. The evidence before me relating to what happened after 23 November 2020 does indicate a very confused path concerning the Claimant's pay and how the end of his employment was processed by the Respondent and when.

35. But I do not see any need to consider that evidence or make findings of fact given that the parties appear to be at one about the discussion between them on 12 November 2020 which appears to be completely unambiguous. In addition, the Claimant has confirmed in evidence that he understood he was dismissed in the meeting and that this was on one month's notice. That understanding corresponds with the email the Claimant sent to the Respondent 23 November 2020.

36. I say no more about the matters that happen thereafter other than it appears to me to be a confusing and untidy mess.

37. In relation to the application to amend the claim, the Claimant states quite simply that the reason for his delay in making his application to amend on 18 June 2021 was that he had assumed from issuing the claim on 25 February 2021 that everyone had the missing attachment. He learned that they did not at the preliminary hearing for case management on 28 May 2021. He then submitted his application to amend within the time frame ordered by Employment Judge Buckley. The Respondent has not challenged that evidence.

The amendment application

38. I am setting this out in full here (adding paragraph numbers) as it would be difficult to understand this judgment without the full version:

    38.1. Firstly, I appreciate the Tribunals understanding and Judge Buckley for allowing me this ability due to the failings of the electronic submission system.

    38.2. I respectfully request that the tribunal looks favourably on my application, this is not a new claim of an additional claim this is purely documents that were not attached to the original claim form, the original claim for noted to the court and the respondent that there is attached documents to the ET1, the responded engaged a solicitors specialising in Tribunal claims, they made no attempt to question that the ET1 noted attached document that they were not in possession of, as a professional body this should have been immediately noted.

    38.3. As I am unrepresented and have never tribunal another employer in all my working years, I have done the best I can during a period of time when the resources at hand have never been so minimal to support, the CAB were not answering and ACAS have been overrun due to the furlough scheme and unscrupulous employers ta king advantage of employees during this pandemic, and changed to employments law that companies sought to take advantage of.

    38.4. This was only noted during the preliminary hearing with Judge Buckley.

    38.5. The respondents changed the solicitor dealing with the case from there company Wirehouse, this should have meant a review of documents would have been carried out by the new solicitor Mr Holmes who represented them at the prehearing on the 28th of May 2021.

    38.6. I also noted relevant information when disclosing documents, then the respondent's solicitor who declined to add them to the bundle, this was dealt with in the pre hearing but again identities that I was not aware that the respondent did not have my complete filling, and that I have been open and made full disclosure.

    38.7. I would also respectfully note that again when I completed my schedule at loss on the 14" April 2021, under injury to feeling I noted very clearly the following statement: the claimant contends he suffered a detriment for making protected

disclosures to the owners and. he was dismissed for also raising a grievance against the CEO (Simon Alderson) and informing them of multiple breached of employment law deliberate breaches (Gang Mastering) and tax (furlough fraud) Issues, use of illegitimate labour provision.

38.8. This again is a clear statement that was not challenged by the respondent's solicitor, they only asked me to drop the case and get on with my life, and rang me fora chat about how difficult it would be for me to prove my case.

38.9. This should in itself identify that they are fully aware and that this is not an amendment but a clarification of facts.

38.10. I filled my claim online as I was unable to speak to anyone. I followed the electronic process and believed it had attached the documents attached to today's application to amend, I received an email saying the ET1 had been filled and nothing more, no notifications of failure to attach any documents, as it wasn't an email process, I was not aware that this had not attached properly.

38.11. I am aware that this may fall outside the time limits had it been a completely new factual allegation. I believe this is not and shown on multiple occasions, I have also made written statement by way of the schedule of loss that specifically identifies this claim, My ET1 have note of further and better particulars after I would have the opportunity to identifies persons involved in the coercion and termination of my employment.

38.12. I was unable to speak to anyone at the Tribunal offices and have waited sometime days and I believe weeks for a confirmation of submissions, I am aware the hardship placed on the tribunal by Covid and the reduction in people to help resolve. or speak to either party, however I believe this should be considered.

38.13. Again prior to the preheating, I noted the protected disclosure to Both Wirehouse solicitors the respondents' solicitors and the tribunal, this being multiple occasion they were aware and not challenged.

38.14. I understand that as I am not legally represented, I have done the best I can with the information and services I hate to hand during this pandemic, I have not sought to change by response only to rely upon the information already provided.

38.15. Judge Buckley asked the respondents solicitors to send me the details of multiple case laws and they referenced on the call and they agreed on the 28'" of may , this has never happened, I am aware as I had not engaged them they are under no obligation to facilitate this information, but why agree on the prehearing so I would stop making notes, as discussed to then not comply, allowing only minimal information supplied by Judge Buckley around (Selket Bus Company V Moore 1996).

38.16. I do not believe this case is relevant as this was a totally new disclose not previously made to the respondent under which he sought to rely on, I have been making this disclosure since the start both in writing and verbally, on multiple documents.

38.17. Further particulars to be considered:

38.18. One of the Disclose was related to breaches of Health and safety at work Act, allowing and in fact condoning the use of a supply chain who consistently breaks employment and health and safety law by making and allowing staff to work extended period sometimes days at a time unregulated and without fear

of repercussions due to their protection at the highest level in the business.

38.19. A senior Director of compliance failing to complete due diligence, either as an act of negligence or again by collusion with the business owners, this was noted by the NSI (National Security Inspectorate) in their audit in November 2019 prior to me Joining, it was written in there summary finding and I believe they reported this person to the HMRC, this was also continued by Mr Tahlil, who advised him just to start another company and get rid of that one due to the investigation.

38.20. In the weeks just prior to my removal, I was carrying out internal investigations around wage rates of my managers and budget spends, I was asking the New finance manager for details about supplier payments and wage role for the departments under my control, I was provided nothing. and told just put together a proposal to the CEO without any factual data, as he was new to the business I gave him the benefit of the doubt as to how much he knew.

38.21. The previous Financial Controller was again a close personnel friend of the owner and refused to give any information in relation to theses suppliers and I believe he was pushed out for refusing to give this information to Mr Alderson also, a three page letter of complaint was made with his resignation, this was told to me by Mr Alderson himself, probably as a pre cursor to understand if I didn't do as he told me I too would be gone, of course that is too the very true.

38.22. On or around the month of September during the hight of the pandemic, While working from my home with the operational compliance manager, due to the MD inviting people into the offices against the covid plan, Mr Bell the operational Compliance manager who I believed was under my supervision, I was taken aback by him having a team's meeting with the CEO and the then compliance Director in my kitchen about what they wanted to do with their departments, it was at this point I became more aware of the behaviours of certain individuals in the business and brought this to the attention of the owner Mr Tahlil, he told me I was wrong and that again I had a job for life due to the quality of my work, he was in the building the day I was removed and was chatting to me all morning.

38.23. He must have informed the CEO that I was now aware of his planes and then they colluded at this point to remove me from the business.

38.24. This business believes themselves to be above all rules and will continue to behave in this way if they are not held accountable for their actions, the tribunal services have an opportunity here to See all the relevant facts and identify this to the appropriate bodies.

38.25. They have a school of people called the supervisors, these are not as you would think employees of First response Group LTD , but suppliers with their own companies, known only to the owners, as previously noted they are referred too only by their names and not there business, they have no fixed locations, only mobile numbers and I believe that the labour they provide is also under the impression that they too are First response group employees, because when they are not paid they ring the First response group offices asking for their wages.

38.26. Conversations are held in different languages about this process and when challenged about this you are made feel like a racist, I am aware when they are talking about me as the work Malachy can only be said as Malachy in the language they use.

38.27. When I challenge them about their behaviours with their staff or try to take an investigation further this is immediately curtailed by Mt Tahlil as he says they don't understand, my department ratified supplier invoices, but not against any of these persons, they go directly to accounts and Jamal and he arranges payments with Sonya the accounts clerk, sometimes by just shouting random amounts over the office floor for her to pay Genny twenty thousand to shut him up.

38.28. The supervisor referred to, I would suggest should be summoned to the tribunal so that they can be cross examined about these behaviours and companies, and you can fully understand this case.

38.29. I therefore throw myself at the mercy of the tribunal services and request that as lone employee looking for the basic justice that the tribunal services were set up to support. I do not believe this Is out of time for all the reasons set out above and the hardship of the current pandemic and lack of support should be furthermore considered.

38.30. …

The amendment text

39. I set out here in full the Claimant's amendment text (again adding paragraph numbering) which he says is the document which he understood to be attached to his claim form when it was submitted to the tribunal. Again it will be difficult to understand this judgment without knowing the full amendment sought:

39.1. 12th of November sent Caley Priestly (HR Manager) email as requested try Simon: Alderson. (NO RESPONSE AT ALL.)

39.2. Spoke to ACAS and advised to follow-up with further communications.

39.3. 23rd Of November Sent another email to Caley Priestly. requesting. Clarifications and written correspondence from the company (NO RESPONSE AT ALL)

39.4. 23rd Of November Sent further correspondence relation to a subject access request. (NO RESPONSE AT ALL)

39.5. Above are dates I have communicated with HR, she was not on maternity leave and was working in the business. dealing with HR matters, there is no reason to ignore my emails, unless as previously noted she was told just to ignore me hoping I would go away.

39.6. I wanted to give as much detail so the tribunal so you could have an understanding of this case fully, the company and its Directors believe they do not have to act in the way they portray the company, posting social media posts about inclusion and mental health and positive messages about how great and supportive they are, when clearly there is systemic policy of intimidations and bullying driven from the very top.

39.7. I was left to work 24hrs a day on call to the control room and Clients and Senior managers who could not fulfil their own positions, no fatigue management at all, I was injured while at work and had to return or be placed on sick pay that they were aware I could not afford, working in the office on crutches and without as much as a risk assessment carried out, I have now and ongoing medical issues, because of the lack of ability to recuperate and recover properly.

39.8. I was offered no training to carry out my role, no written contract of my Directorship was ever made, and no job description given, I had to ask during the pandemic for mental health courses to be made available to me as I was aware of the stress this was putting my colleagues under, and the support I needed myself.

39.9. I was treated less favourable as I refused to ignore the company's behaviour issues and what I believe to be illegal practices, gang mastering of off payroll employees, getting others to set up companies and run them under the guise of being a different company when FRG had full controlling minds over their behaviours, even purchasing equipment and vehicles for them.

39.10. Furloughing people that were still operating on behalf of the group in a sales role, placing social media post and working, I was ostracized for complaining about this and removed from the group dealing with the furlough of staff and their details, by Mr Alderson when address in a teams meeting (online Video).

39.11. Ongoing actions were to make me pay for the company's engineers and managers hotel and food bills, so they could take months sometimes to pay me back, if at all, I was owed thousands at one point and refused to make further payments as it was affecting me financially.

39.12. Mr Tahlil told all suppliers and employees and auditors that I had a job for life as he had never worked with anyone as well rounded as me, and he was having the best time of his life, I had recently brought in debts of over £15000,00 pounds and secured new sales of key holding and alarm response to 67 locations, something the sales Director had not even involved himself in, and debt the CEO wanted to right off, I had to guild the owner through the process of collection and meet with the client to oversee the completion of specific guarantees, due to this the CEO said I had to stop speaking with Mr Tahlil and only talk to him, about such matters, he was very aggressive and when challenged about ignoring all my calls was dismissive of my question, Just saying move on, this again was in a video meeting with other, who are still employed or have received promotions and pay rises from removal so will not speak up.

39.13. I have suffered reputational risk, by them just telling FRG employees I no longer work for FRG and immediate promoting the (Consultant) who had already taken a leading role in one of Mr Tahili's other nefarious companies and my Compliance manager, who had been having multiple conversations directly with Mr Alderson undermining my position and furthering his career by what ever offer had been placed on the table by Mr Alderson clearly, again noted by others.

39.14. I wrote an email of complaint the HR in august 2020, about Mr Alderson, again not responded too, asking for assistance and wanting to know why only I was being treated in such a way, I never missed a days work and attended the office during the COVID-19 lockdown as I was told too, as Mr Tahlil was ring up multiple managers and myself asking how they were enjoying their holidays, when they were clearly working from home, as directed by the COVlD-19 plan, again creating uncertainty in the team and undermining the credible work they had done, while the company was making very large profits and extremely busy during this period

39.15. No direct communications were noted to suppliers and people I had brough to the business and they were previously known to me, I have been, and I am still personally chased by multiple people asking for an explanation, as

no formal notifications was put out leaving people to think I must have done something wrong and was removed, I have now reference to give prospective employers and to show the dates and details required with our industry as standard, they are full aware of how this will affect my long term employability within this industry.

39.16. I worked tirelessly during the pandemic for the safety of all our colleagues and client's staff as well, only to be constantly undermined by the owners who believed I was being overly cautious, and they could not wait to get covid19, there words not mine and repeated many times, inviting persons into the office for meetings and allowing staff to not follow the rules based on friendship and not safety.

39.17. This submission is basic at this point as I will be able to disclose further and identify the behaviours to you in person, there questionable relationships with senior clients and investigations by HMRC.

39.18. The company has failed to follow any basis employment guidelines.

39.19. Despite my numerous attempts of me trying to speak the company and have been amicable I have

39.20. been forced to take this action.

39.21. No communication with me even after I specifically requested this information, in writing from the head of HR.

39.22. No verbal or written communications from the owners of the business as advised.

39.23. No Particulars and job description given to me, for the role I was undertaking.

39.24. Advising me to opt out of the company car scheme, that I am now left with a vehicle of reduced values at my expense, ongoing losses.

39.25. Failure to offer training or guidance and for the role I was undertaking, or in support of my own mental health.

39.26. Failure to have or manage any fatigue management plan for my role, or that of other management, resulting in my own injury and issues with my family,

39.27. Not paying expenses in a timely fashion, ongoing deductions.

39.28. Removal of my fuel card when asked to leave the building on the. 12th during my garden leave. I shouldn't not have had this removed till the end of my garden leave.

39.29. Not given any rights of appeal against this decision.

39.30. Being told I was to be offered another position in the group, as has previously happened with multiple people, for it never to happen.

39.31. Failure to deal with my Grievance raised bother verbally to the owner Mr Jamal Tahlil multiple times and In writing to HR. (whistle blowing)

39.32. I have found out now that they have reduced my pension payments since i started and I was never informed of such actions, I have suffered a loss

and this loss in ongoing of my full pension values.

39.33. Supplier working outside the working time directive, and not challenged as the owner of that, business takes Holidays abroad with Mr Tahlil and they have business interests together outside the UK.

39.34. Mike Bell sent me supplier invoices with a charge rate of £8.72, of course this should not happen and when I brought this to the attention of the owners, I was told that it's not my concern, this was not long before my removal from the business, such practices are illegal and must be stopped.

39.35. I have a loss of wages and a loss of conditions and pension due to their behaviours and they changed my initial rile with no consultation just a meeting saying I was being promoted, and I could achieve the salary of the person I replaced at seventy five thousand within the year if I delivered, of course this wage rise did not happen and never received a full review just a basic further uplift, I did however deliver enough for them to be noted by the media as a business to watch.in the Sunday times fast track companies."

Submissions

40. The Respondent submitted in relation to the jurisdictional issue of length of service that unambiguous words should be taken at face value. During the conversation between Mr Alderson and the Claimant the Claimant was told his employment was being terminated on one month's service. Mr Alderson has been clear and consistent in his evidence whereas the Claimant has not. The surrounding actions are also consistent; the Claimant returned his phone, tablet and equipment and was escorted off the premises. What happens afterwards is moot and academic. The important element is what was said. It was very clear employment was terminated on one months' notice effective immediately.

41. The Respondent produced written submissions concerning the amendment application (45-54). I am grateful for the time that the Respondent has taken to set out the relevant law on amendments to a claim. As the authorities make clear, whilst tribunal regularly deal with applications to amend and are familiar with the Selkent guidance, it is important to read the authorities each time and to ensure not only that the principles are understood but also that they are applied in considering each application.

42. The Respondent repeats some element of the presenting history, which I have already covered above. The Respondent says this of the information provided by the Claimant:

At its height, the information contained in this document (which was never received by the Employment Tribunal) is; "Failure to deal with my grievance raised bother verbally to the owner Mr Jamal Tahlil multiple times and in writing to HT. (whistle blowing)" sic… The Claimant makes several allegations and raises several issues, but nothing which could be realistically be identified as a clear claim of being dismissed based on a making a qualifying protected disclosure.

43. The Respondent sets out several authorities to me:

43.1. Scottish Opera Limited v Winning EATS 0047/09

43.2. Selkent Bus Company v Mooree [1996] IRLR 661

43.3. Chief Constable of Essex Police v Kovacevic EAT 0126/13

43.4. Ladbrokes Racing Limited v Traynor EATS 0067/06

43.5. Vaughan v Modality Partnership [2021] ICR 535.

44. I am grateful to the Respondent for providing copies of the authorities referred to.

45. I will set details of these cases out below when setting out the law. The Respondent's submission on these authorities is as follows:

It is clear from the case law that a detailed amendment on which all parties can rely, which sets out the amendment and new allegations clearly, must be provided at the time of making any application to have an amendment accepted by the Tribunal. Should it not be provided, and clearly laid out, as the case here, then any application to have an amendment accepted should fail.

46. The key submissions from the Respondent are:

18. The Respondent submits that the Claimant has wholly failed to;

a. Provide any adequate particulars for the claim of s.103A ERA 1996 to which the Respondent could sensibly respond

b. Comply with the Order as stated in the Case Management Orders sent to the parties on 1st June 2021.

19. The parties are no further forward in identifying any claim, and there is no clear allegation on which the Respondent can consider, investigate, and respond, or on which the Tribunal can reach a conclusion.

20. The Claimant has regretfully failed to comply with the Tribunal Order dated 28th May 2021 and sent to the parties on 1st June 2021. The Claimant has been provided with a clear breakdown of what was required at section 9 of the Orders. It would appear based on the contents of the proposed amendment that this Order has been wholly ignored.

21. It is acknowledged that the Claimant is a litigant in person, but the Claimant is

a. educated and able to conduct these proceedings,

b. has no language barrier

c. has access to the internet and resources.

d. Has had the opportunity to seek professional legal assistance on this claim.

The Respondent submits that the Claimant has failed to articulate adequately, or at all, any details which could amount or be considered to be a qualifying disclosure on which a s.103A ERA 1996 could be built, and thus the amendment fails to comply with Winning.

23. The amendment did not require to be in a legal format. The Tribunal provided a clear list of factual elements which needed to be included within the proposed amendment. These are conspicuous in their absence.

24. Further, the Respondent also submits that the proposed amendment fails to comply with ETs (Constitution & Rules of Procedure) Regs 2013, sch 1, para 12(1)(b), namely that it is not; In a form which cannot sensibly be responded to or is otherwise an abuse of process.

25. At the moment neither the Respondent or the Employment tribunal can articulate or glean from the proposed amendment

a. What the details are which may amount to a qualifying disclosure

b. When they were made

c. To whom they were made

d. The manner in which they were disclosed

26. Should the proposed amendment be granted, the Respondent submits that the Claimant would be required to state details of this element of the claim yet again.

27. The Respondent submits, however, that the starting point as to whether or not a proposed amendment should be accepted should be to consider the nature. The Respondent submits that the nature of the amendment is unparticularised, opaque, and vague. In no way can the Respondent sensibly respond to the proposed amendment as detail and particulars of the complaint are conspicuously absent from the proposed wording, which places the Respondent at a considerable disadvantage to the Claimant in that it is attempting to defend a wholly unknown allegation.

28. The Respondent submits that the proposed amendment is not a minor relabelling exercise or correcting a typographical error. It will make a substantial impact on the case and wholly changes claims previously put forwarded by the Claimant. Previously, the case was for unfair dismissal based on procedural issues. The Claimant is now alluding to, and no more, claiming that his employment was terminated on grounds of making a protected disclosure. Depending on the specifics, which remain unknown, it will require

a. A substantially longer employment tribunal hearing

b. Different / additional witnesses

c. Further delay in the matter reaching a full merits hearing

29. In considering the second element of the Selkent test relating to the applicability of time limits, the Respondent submits that the amendment is now well out of time. The Respondent submits that the Claimant's effective date of termination was 12th December 2020. The claim of being dismissed on grounds of making a protected disclosure are now substantially out of time.

30. The Tribunal was generous in providing a window in which the Claimant could draft a proposed amendment and request that the amendment be accepted. This period has now expired, and the Respondent and tribunal are no wiser in understanding this proposed amendment to the claim, and the Claimant's claim of s.103A ERA 1996.

31. In considering the third element of the Selkent test, relating to the timing of the application, the Respondent submits that this matter will be decided at a Preliminary Hearing on 19th October 2021 at which point, if successful, the Claimant would be required to provide yet further particulars of the claim. This will have prolonged the process, and delayed the matter being resolved in a timely manner. This hearing will take place over 10 months after the Claimant was dismissed, at which point, at best, memories will have faded, documents lost, a year will have passed with no real progress in the case. This could have been avoided had the Claimant submitted a detailed complaint within the ET1 or complied with the Tribunal orders from the case management discussion.

32. We come to the final point of the Selkent test, which has been given more prominence due to Vaughan, which is the balance of hardship and injustice in allowing (or not) the amendment and the practical difficulties and issues for the parties. The Respondent is wholly prejudiced on the basis that it does not know any of the details of the s.103A ERA 1996 claim.

33. The Claimant was able and capable of providing specific details of the wages claims, and has adequately provided those details to the Tribunal and Respondent. In regards to this new element, despite detailed information being provided by the Tribunal of the detail required none has been forthcoming and including in the 'proposed amendment'.

34. Across several documents the Claimant has mad various negative remarks relating to the Respondent and how it operates, but this does not make a claim for the purposes of s.103A, nor provide the Respondent with any ability to adequately prepare a defence against an opaque, 'scatter-gun' approach to making assertions against the Respondent and hoping that one may somehow be valid.

35. The Respondent is wholly prejudiced by not knowing the case against it. The Respondent does not know;

a. what is alleged to have been said or written

b. To whom any alleged disclosure was made

c. The date(s) on which the disclosure was made

d. Whether it was information that was disclosed or something else

e. Whether he believed the disclosure of information was made in the public interest and the basis for this belief

f. Whether or not it was reasonable for him to have said belief, and an explanation why

g. Which of the elements in 1.1.5 of the Orders the Claimant alleges the disclosure relates

36. The practical difficulties for the Respondent are substantial. It does not know;

a. Which witnesses to call to give evidence

b. Whether further witness evidence is required

c. Witnesses may have left the organisation and be difficult to contact

d. Memories will have faded

e. What documents may help (or hinder) the case and are relevant for disclosure

f. What, in simple terms, is the case being made against it.

37. It would be against natural justice and the overriding objective for the claim of s.103A ERA 1996 to proceed against the Respondent as the Respondent is wholly in the dark on the facts being levelled against it, and thus unable to prepare to defend against any allegation which is made either in the Claimant's witness statement or at the hearing.

38. Should the proposed amendment be allowed, the first thing the tribunal would

have to do is attempt to ascertain what the actual s.103A claim is, which, the Respondent respectfully submits, would be putting the 'cart before the horse' and acting in a manner similar to that of Traynor and Kovacevic.

39. Based on the proposed amendment before the Tribunal, the Respondent submits that it would be significantly prejudiced should it be allowed, that the s.103A claim remains wholly unparticularised, and that the application to amend the claim should be dismissed.

47. Supplementing those submissions verbally during the hearing, the Respondent submitted that the Claimant has had two opportunities to lay out his claim in simple terms but what Employment Judge Buckley asked for is all missing from the application and further information. The Respondent remains in the dark about the claim and what witnesses to call. The amended claim would require further and better particulars. All of the claims would be out of time at the point of application for the amendment. The Respondent does not know what the disclosures were, detriment claims are emerging as a limb. Witnesses, evidence, all would need a further preliminary hearing to decide the issues. This is kicking the can down the line. The Claimant now states he may have access to a solicitor. He was not on national minimum wage, he was well paid, £50,000 per annum, he has access to technology, is educated and could seek proper representation.

48. The Claimant submitted in relation to the length of service issue that he was told that what they discussed on 12 November 2020 would be confirmed to him in writing by HR. He queried this in an email 23 November 2020 but never received a reply. He never received the letter on page 66 dated 13 November 2020, the email address it was sent to does not exist. He never received the P45 either. The HR Manager had failed to communicate properly. She does not deal with payroll. HMRC have no record of an end date. The only communication I received were payslips advising I was on garden leave. The contract of employment he had was for his previous position and he was told he would receive a new one with 3 months' notice and the same pay as the previous director once he had proven his worth. He was told his job no longer existed then they appointed someone else. Had the email dated 13 November 2020 in fact been sent to him that would have advised him that he was on 3 months' notice.

49. The Claimant made a number of other submissions to me concerning matters that did not relate to issues before me today, such as the training and development that he was not given, not being given a written reference as promised, inappropriate comments being made to him in the office, how hard he worked, how he worked whilst he suffered a broken ankle. I have listened to these points but they are not relevant to either of the two issues before me today.

50. In relation to his amendment application, the Claimant submitted that he should apologise to the tribunal. He noted that he is unrepresented. He submitted his submissions today are not scripted. He submitted that his first submission to the tribunal was clear, and the acknowledgement he received back did not suggest that the attachment did not go through. He has discussed the case with the Respondent, it is clear that the pages had not attached. Employment Judge Buckley allowed me to resubmit and apply to amend. Employment Judge Buckley did check with the online filing people but they said they received no attachment. In his claim form (7) he expressly stated that a document was attached. There were far more qualified people than him dealing with this matter and they never asked where the attachment was.

51. I asked the Claimant what amendment he was seeking, whether it was to add a claim of unfair dismissal (protected disclosure), or was it a claim about detrimental treatment that he suffered before he was dismissed. I gave the Claimant simple examples to illustrate the difference. The Claimant advised me that he was seeking

to add a complaint of unfair dismissal for making a protected disclosure and that he was not seeking to add a complaint that he suffered detrimental treatment before he left because he had made protected disclosures.

The Law – general

52. Section 94 of the Employment Rights Act 1996 sets out the right not to be unfairly dismissed. This is commonly referred to as an "ordinary" unfair dismissal claim.

53. Section 108(1) provides that Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

54. Section 108(3) disapplies the two year rule in some cases, including where Section 103A applies, which sets out that 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.

55. Section 103A is one of the claims commonly referred to as an "automatically unfair" dismissal claim.

56. In the Claimant's case he could in theory have either claim. If he meets the two year rule, he can bring an ordinary unfair dismissal claim. If his application to amend is successful, he can bring an automatically unfair dismissal claim.

The Law – jurisdictional issue – length of service

57. As set out above, in an ordinary unfair dismissal claim a claimant must meet the two year rule. The question will be had a claimant been continuously employed for a period of not less than two years ending with the effective date of termination.

58. Section 97 contains provisions concerning the effective date of termination as follows:

> *97 Effective date of termination.*
>
> *(1) Subject to the following provisions of this section, in this Part "the effective date of termination"—*
>
> *(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,*
>
> *(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, …*

59. Generally the construction of a conversation regarding the date of termination should not be a technical one and the test is an objective one; what a reasonable employee's understanding would be in the light of facts known to him at the time. But if the content of the conversation is unclear then the matter should be construed in the way that is most favourable to the employee (known as the contra proferentem rule). See Chapman v Letheby Christopher Ltd [1981] IRLR 440.

60. Post termination correspondence may be considered in considering whether or not the employee had in fact fully understood his position. Where the dismissal is ambiguous as the effective date post termination correspondence should not be considered (Minolta (UK) Ltd v Eggleston EAT 331/88).

The Law – amendment to a claim

61. The Tribunal's power to consider amendments to a claim is set out in the Employment Tribunal Rules 2013 which are contained in Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the Rules".

62. The overriding objective of the Rules is set out as follows:

"2. Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

63. The specific rules which contain the powers are Rule 29 which permits the Tribunal to make case management orders and Rule 41 which allows the Tribunal to regulate their own procedure in the manner they consider fair, having regard to the overriding objective set out above. Amendments are thus a matter of judicial discretion.

64. Guidance given by Mummery J in Selkent Bus Company Ltd v Moore [1996] ICR 836 at the time when he was President of the EAT is frequently quoted as the key test for determining an application to amend a claim. These were the key points made:

"(1) The discretion of a Tribunal to regulate its procedure includes a discretion to grant leave for the amendment of the originating application and/or notice of appearance: Regulation 13. See Cocking v. Sandhurst Ltd [1974] ICR 650 at 656G - 657D. That discretion is usually exercised on application to a Chairman alone prior to the substantive hearing by the Tribunal.

(2) There is no express obligation in the Industrial Tribunal Rules of Procedure requiring a Tribunal (or the Chairman of a Tribunal) to seek or consider written or oral representations from each side before deciding whether to grant or refuse an application for leave to amend. It is, however, common ground that the discretion to grant leave is a judicial discretion to be exercised in a judicial manner ie, in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions.

(3) Consistently with those principles, a Chairman or a Tribunal may exercise the discretion on an application for leave to amend in a number of ways:

(a) It may be a proper exercise of discretion to refuse an application for leave

to amend without seeking or considering representations from the other side. For example, it may be obvious on the face of the application and/or in the circumstances in which it is made that it is hopeless and should be refused. If the Tribunal forms that view that is the end of the matter, subject to any appeal. On an appeal from such a refusal, the appellant would have a heavy burden to discharge. He would have to convince the Appeal Tribunal that the Industrial Tribunal had erred in legal principle in the exercise of the discretion, or had failed to take into account relevant considerations or had taken irrelevant factors into account, or that no reasonable Tribunal, properly directing itself, could have refused the amendment. See Adams v. West Sussex County Council [1990] ICR 546.

(b) If, however, the amendment sought is arguable and is one of substance which the Tribunal considers could reasonably be opposed by the other side, the Tribunal may then ask the other party whether they consent to the amendment or whether they oppose it and, if they oppose it, to state the grounds of opposition. In those cases the Tribunal would make a decision on the question of amendment after hearing both sides. The party disappointed with the result might then appeal to this Tribunal on one or more of the limited grounds mentioned in (a) above.

(c) In other cases an Industrial Tribunal may reasonably take the view that the proposed amendment is not sufficiently substantial or controversial to justify seeking representations from the other side and may order the amendment ex parte without doing so. If that course is adopted and the other side then objects, the Industrial Tribunal should consider those objections and decide whether to affirm, rescind or vary the order which has been made. The disappointed party may then appeal to this Tribunal on one or more of the limited grounds mentioned in (b) above.

(4) Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:

(a) The nature of the amendment

Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

(b) The applicability of time limits

If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions eg, in the case of unfair dismissal, S.67 of the 1978 Act.

(c) The timing and manner of the application

An application should not be refused solely because there has been a delay

in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time - before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision."

65. The Respondent has quoted Ladbrokes Racing Limited v Traynor [2006] EATS 0067/06 which highlights that an application to amend must include details of the amendment sought in precise terms. They draw my attention to paragraph 20:

"When considering an application for leave to amend a claim, an Employment Tribunal requires to balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing. That involves it considering at least the nature and terms of the amendment proposed, the applicability of any time limits and the timing and the manner of the application. The latter will involve it considering the reason why the application is made at the stage that it is made and why it was not made earlier. It also requires to consider whether, if the amendment is allowed, delay will ensue and whether there are likely to be additional costs whether because of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if they are unlikely to be recovered by the party who incurs them. Delay may, of course, in an individual case have put a respondent in a position where evidence relevant to the new issue is no longer available or is of lesser quality than it would have been earlier. These principles are discussed in the well known case of Selkent Bus Co Ltd t/a Stagecoach Selkent v Moore [1996] IRLR 661."

66. The Respondent has also quoted Scottish Opera Limited v Winning [2009] EATS 0047/09 which records at paragraph 5 that "*clear and accurate pleadings are of importance in all cases, but particularly in discrimination claims. It is essential that parties seeking permission to amend to introduce such a claim formulate the proposed amendment in the same degree of detail as would be expected had it formed part of the original claim; and tribunals should ensure that the terms of any such proposed amendments are clearly recorded.*"

67. In Chief Constable of Essex Police v Kovachevic [2013] UUKEAT/0126/13/RN warns of the dangers of an Employment Judge engaging with the application to amend. At paragraph 21 it is stated:

"It is quite plain that the Employment Judge wrongly engaged with the application to amend in this case. Before even turning to the question of the right test, it is fundamental that any application to amend a claim must be considered in the light of the actual proposed amendment. The Employment Judge did not have before him, reduced to writing or in any form, the terms of the amendment being proposed. It might be, … that in certain circumstances (e.g. where a very simple amendment is sought or a limited amendment is asked for by a litigant in person) that an Employment Judge may be able to proceed without requiring the specifics of the amendment to be before him in writing. But this was a case in which the Claimant was being represented by a professional representative whom he had selected and recently instructed. The Employment Judge plainly could, and should, have required the representative to reduce the application to writing before considering it on its merits. The dangers of doing otherwise are obvious and are made manifest by what happened in this case."

And at paragraph 23:

"One of the dangers of permitting an amendment without seeing its terms is that, having been given the green light to draft an amendment, a party may go beyond the terms which the Judge was led to understand might be included in the amendment he was permitting. In this particular case, the schedule later drawn for the Claimant in response to the Judge's order sets out a very large number of allegations and incidents which span a period of many years and involve many different individuals and occasions."

68. Finally I have been referred to the case of Vaughan v Modality Partnership [2021] ICR 535. This is the summary in the case report:

"This judgment may serve as another reminder that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The exercise starts with the parties making submissions on the specific practical consequence of allowing or refusing the amendment. If they do not do so, it will be much more difficult for them to criticise the Employment Judge for failing to conduct the balancing exercise properly.

The balancing exercise is fundamental. The Selkent factors should not be treated as if they are a list to be checked off.

An Employment Judge may need to take a more inquisitorial approach when dealing with litigants in person."

Conclusions on the jurisdictional issue

69. In my conclusion an unambiguous dismissal on one month's notice was communicated by Mr Alderson to the Claimant during their meeting on 12 November 2020.

70. The Claimant understood that as he has made clear in his evidence and as he confirmed in his subsequent letter to the Respondent 23 November 2020.

71. This means that the notice period began on 13 November 2020 (it runs from the day following that on which it was given) and the effective date of termination was 12 November 2020.

72. It does not matter that the Respondent acted inconsistently with that dismissal or with the Claimant's understanding of that dismissal subsequently by sending to him payslips indicating that he was being paid whilst on gardening leave or by effecting his dismissal by P45 on a later date than that which was effective.

73. Once a dismissal has been effectively communicated and understood, with an effective date, it cannot be varied or extended by the employer through their unilateral actions. It may be shortened, but that is not a factor in this case.

74. The Claimant has insufficient service to bring a claim of unfair dismissal; continuity of employment was less than two years on the effective date of termination.

75. The Claimant's claim of ordinary unfair dismissal is dismissed because the employment tribunal does not have jurisdiction to hear that complaint by reason of the provisions of Section 108(1) of the Employment Rights Act 1996.

Conclusions on the application to amend

76. I note the context of the application to amend in this case.

77. The Claimant expressly referred to an attachment in his claim form in his original application to the Tribunal made on 25 February 2021.

78. So far as his claims was for unfair dismissal and for payments there is no question concerning the timing of the original application, the date of dismissal being asserted as 31 January 2021.

79. Some of the authorities presented by the Respondent relate to applications to amend where the amendment application has not been particularised in writing.

80. That is not the case in this application. The Claimant has made a written application to amend following the case management hearing on 28 May 2021. The application is before me in writing and I have copied it in this judgment at paragraph 38 above.

81. I also note that the amendment sought is to reinstate the attachment which the Claimant believed had been attached to the claim when it was submitted on 25 February 2021. That is also a written document, and I have copied this in to this judgment at paragraph 39 above.

82. An issue in this case appears to me not that I do not have the terms of the proposed amendment before me. Rather, it is that even with the benefit of the original intended attachment (paragraph 39 above), the Claimant's whistleblowing case is not altogether clear.

83. Even when the Claimant adds the application (paragraph 38 above), it remains unclear to me what the Claimant's whistleblowing case is about.

84. The starkest presentation of this lack of clarity is the question of whether the whistleblowing claim is about an unlawful detriment for the purposes of Part V of the Employment Rights Act 1996, Section 48, or if it is about his dismissal for the purposes of Section 103A, or indeed both.

85. The intended attachment does not expressly mention either claim.

86. It is unclear whether the health and safety issues and lack of fatigue management are alleged to be detriments (paragraph 39.7 above).

87. There is reference to less favourable treatment (39.9) without particulars. Then there is a reference to being ostracised (39.10).

88. There is reference to him being made to pay for the expenses of other staff (39.11).

89. There is reference to the submissions being "basic at this point as I will be able to disclose further and identify the behaviours to you in person…" (39.17).

90. There is then a list of complaints at 39.18 to 39.30. It is unclear whether these are alleged to be connected to a protected disclosure. Little can be gleaned from the attachment as to when any of these matters occurred but more importantly whether or not those matters are linked to a protected disclosure by the Claimant.

91. There is then reference in paragraph 39.31 to "*Failure to deal with my Grievance raised bother verbally to the owner Mr Jamal Tahlil multiple times and In writing to HR. (whistle blowing)"* which appears to me to be the clearest example of a potential Section 48" albeit it is not dated. There is reference elsewhere to a letter in August 2020 and the Claimant confirmed this in the hearing to be the grievance letter.

92. There are references to suppliers working outside the working time directive (39.33) but no references to whether or not they are asserted to be protected disclosures or to have caused any detriment or relevance to the Claimant's dismissal.

93. There is then a reference (39.34) to illegal wage rates brought to the attention of the owners of the Respondent "not long before my removal from the business". This is as close as the Claimant gets to explaining a disclosure that placed at a point in time where he might suggest that this was a causative factor in his dismissal. But the Claimant does not say that.

94. At paragraph 38 above I have copied the Claimant's application to amend. This document has been produced subsequent to the case management hearing on 28 May 2021 where the Claimant was (see paragraph 9 of the order) specifically asked to set out the details of the protected disclosures relied on (what was said, to whom and when) and was provided with further information as to the issues that would be considered by the tribunal.

95. In the application document, the Claimant has provided what he has headed "Further particulars to be considered" (paragraph 38.17).

96. From paragraph 38.18 I can see that the claimant refers to a disclosure concerning health and safety, which appears to concern "supply chain" working extended periods. But I have no idea what was said, to whom and when, as the Claimant was expressly asked to set out at the case management hearing on 28 May 2021.

97. From paragraph 38.19 I can see something which may concern the NSI and/or HMRC but again, I have no idea reading this what was said, to whom and when.

98. From paragraph 38.20 and 38.21 the Claimant states that he was carrying out internal investigations around wage rates. But I have no idea what was said, to whom and precisely when. I note that it is said to be in the weeks "just prior" to my dismissal but I do not know what the Claimant means by that.

99. I can see at paragraph 38.22 and 38.23 that the Claimant may be linking those matters directly to his dismissal. I cannot tell from the further particulars which of the three matters he has explained within 38.18 to 38.21 he is linking to his dismissal, is that a continuation which only concerns the latter point raised or is dismissal being linked to all three?

100. I remain, after reading these further particulars, completely unclear as to whether or not the Claimant is bringing a Section 48 detriment claim.

101. The Claimant states at paragraph 38.7 "*I would also respectfully note that again when I completed my schedule at loss on the 14" April 2021, under injury to feeling I noted very clearly the following statement: the claimant contends he suffered a detriment for making protected disclosures to the owners and. he was dismissed for also raising a grievance against the CEO (Simon Alderson) and informing them of multiple breached of employment law deliberate breaches (Gang Mastering) and tax (furlough fraud) Issues, use of illegitimate labour provision. "*

102. That contains a clear statement of a Section 48 detriment claim. Yet when I asked the Claimant during the hearing today whether the amendment was to bring a Section 48 detriment claim or only to bring a Section 103A dismissal claim, the Claimant told me that he was only intending to bring a claim about his dismissal. I asked him again was he not complaining about things that happened to him before his dismissal and he replied he was only complaining about his dismissal.

103. It appears very clear from the case management order from the hearing on 28 May 2021 that an application to amend to include a Section 48 claim was not envisaged at that stage of the proceedings.

104. Each time I read a section of the Claimant's application to amend I cannot reconcile it with the remainder of what he writes. I cannot tell if "*raising a grievance against*

the CEO (Simon Alderson) and informing them of multiple breached of employment law deliberate breaches (Gang Mastering) and tax (furlough fraud) Issues, use of illegitimate labour provision" are different from what he states are the three further points of further particulars at paragraphs 38.18 to 38.21 nor can correlate them with the points made in the intended attachment to the original claim form.

105. Whilst I do have the benefit of a written application to amend in front of me, it presents a very confused account.

106. If I take the Claimant to his word in the hearing today, which I am prepared to do for the purpose of this application, that this is only an application to amend to bring a Section 103A complaint of dismissal for a protected disclosure, I remain unclear what the protected disclosure is.

107. On my reading of the Claimant's application and attachment, it would be one of many matters he has raised, or indeed all of them.

108. Despite being asked to spell out clearly what was said, to whom and when in relation to each alleged protected disclosure, the Claimant has not set that out in relation to any of the matters.

109. I therefore consider that I should proceed with this application to amend with considerable caution. I am unclear as to the claim the Claimant is amending his claim to bring.

110. I do not know the particulars of the claim he is intending to bring at all.

111. I therefore will have considerable difficulty in balancing the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

112. The introduction of a Section 103A claim is a different claim to the one originally raised. This does change the basis of the original claim. It is a substantial alternation pleading a new course of action.

113. The amendment has been brought at a time where it would, if presented under the cover of a new claim form, be out of time.

114. A question for me is whether or not it was reasonably practicable for the Claimant to have brought the claim in time. We do not know whether or not there was a technical issue in relation to an upload or whether or not this was a case of user error. It may even be that the Claimant simply forgot. In those circumstances it is difficult to conclude anything other than it was reasonably practicable for the attachment to have been uploaded with the original claim. There is no evidence of a technical problem with the site. There is nothing in the evidence to suggest that the Claimant was prevented from undertaking the upload.

115. In any event I take account of the fact that time limits are not determinative of an application to amend a claim.

116. I appreciate that the Claimant only became aware of the missing attachment when the matter came to the case management hearing 28 May 2021 and that he submitted his application to amend on 18 June 2021, within the time directed by Employment Judge Buckley.

117. There appears to me little that the Claimant can be criticised for in relation to the timing of his application to amend.

118. However, the nature of the proposed amendment is something which weighs heavily against the Claimant in this application.

119. The claim in its amended form, acknowledging that it is at least in writing, is totally unclear. As I have explained above, I do not know what the protected disclosures are, what was said, to whom and when.

120. I note that these matters would ordinarily be addressed relatively easily. Had the attachment been included with the original claim the claim may have been put into the open rather than into the standard track for considering such claims and a case management hearing may have taken place to gain further particulars in order to be in place where the Respondent could answer the claims and the issues between the parties could be listed for a final hearing.

121. However the Claimant has not taken the opportunity to provide basic and essential details about his case despite being asked to do in writing through the order following the order on 28 May 2021.

122. If the amendment is allowed, the case could take a direction that I am unaware of. The Claimant would certainly need to provide further particulars, what are the protected disclosures he relies on and what was said, to whom and when. I simply do not know the full extent of the case which may be opened up. There is a great risk of the matter opening up in a manner raised in paragraph 23 of *Kovachevic*.

123. If the amendment is allowed it would need further information and further case management. There is no clear indication of what the output would be from that, or whether or not further case management would again be needed before the case is understood and presented in a fashion that can be answered.

124. I appreciate that the Claimant is a litigant in person however I note that he has been asked to set out what the protected disclosures were, what was said, to whom and when. The Claimant is an educated professional who was employed in a senior position at the Respondent's company and was perfectly able to answer questions put to him during the hearing whereas he has not when asked to set out his claim. He had a period of 3 weeks to attend to his amendment application and the guidance contained the Tribunal's order which was issued on 1 June 2021.

125. The Claimant is not suggesting that he has recently discovered any new facts. He had by the time of this hearing had many months to clearly articulate the case he wishes to bring against the Respondent.

126. I have taken into account the need to ensure that the parties are on an equal footing and have taken considerable time to consider the Claimant's amendment application in depth and at its height because he is a litigant in person.

127. I take into account the prejudice that the Claimant will feel he has suffered if the amendment is not allowed, he will not be able to proceed with any claim of unfair dismissal.

128. I fully appreciate the importance of the protection that should be afforded to people who make protected disclosures.

129. I do not criticise the Claimant for bringing an imperfect application to amend however there appears no reason to me why he could not include the very basic matters that he was asked to include.

130. The Respondent and the Tribunal will suffer delay and further expense if I allow the amendment and I reiterate that in this case there remains no clear line of sight to a particular claim of unfair dismissal for a protected disclosure at the end of it.

131. In my conclusion, the injustice and hardship of allowing the claim outweighs the injustice and hardship of allowing it on the particular circumstances of this

amendment application.

132. The Claimant's application to amend the claim is refused.

Employment Judge Knowles
2 November 2021