



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4107906/20

Held on 18 November 2021

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Employment Judge N M Hosie

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Mr D Taggart

**Claimant
In Person**

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University of Edinburgh

**Respondent
Represented by:
Mr N Maclean -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that the claim has no reasonable prospect of success and is struck out in terms of Rule 37(1)(a) in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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REASONS**Introduction**

- 5 1. I issued a Judgment in this case on 29 June 2021. I dismissed all of the claimant's complaints "for want of jurisdiction" apart from the complaint of detrimental treatment in relation to protected disclosures (whistleblowing) relating to the events of 17 September 2020, 18 September 2020 and 18 October 2020.
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2. I dealt with the claimant's whistleblowing complaint at paras 76 to 80 in the Reasons for my Judgment. I mistakenly referred to 18 September in these Reasons. I should have referred to 17 September.
- 15 3. In response to my directions the claimant submitted Further and Better Particulars on 13 July 2021 and the respondent's solicitor responded by email on 27 July 2021.
4. At paras 81 and 82 in my Reasons I advised that on receipt of the claimant's
- 20 Further and Better Particulars and the respondent's response I would revisit the time bar issue and also consider the "prospects" of the whistleblowing detriment complaint succeeding.
5. By email on 18 October 2021 the claimant confirmed that he was agreeable
- 25 to the outstanding issues being determined "on the papers": on the basis of

his Further and Better Particulars and the respondent's response. By email on 25 October 2021 the respondent's solicitor confirmed that he was also agreeable.

5 **Discussion and Decision**

"Prospects"

6. I first considered the prospects of the whistleblowing complaint, as amended by the claimant's Further and Better Particulars, succeeding.

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7. The "protected disclosure" relied upon by the claimant was the submission of his grievance on 18 February 2020 (P). As the respondent's solicitor submitted the grievance was summarised in the grievance outcome (P265) as follows:-

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"a. An allegation of harassment and negligence, in terms of management, support and career development. This included the allegation of failure to make reasonable adjustments for a disability.

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b. Concerns regarding inequity or opportunity related to research funding, with an allegation that (the claimant) was unable to carry out particular aspects of research because funding from the CRUK grant that employed the claimant was diverted into other projects in the host laboratory.

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c. *An allegation of bias and favouritism shown to another member of laboratory staff. This arose from a perceived conflict of interest due to the member of staff being married to the Head of the Research Group.*

d. *An allegation about authorship on a research paper, yet to be written.”*

10 8. I am satisfied that the submission by the respondent’s solicitor that, “*the claimant did not reasonably believe any of these allegations disclosed wrongdoing of a type to fall within the list in s.43B(1)(a) to (f) of the Employment Rights Act 1996 is well founded.*”

15 9. Further, and in any event, in order to be protected, a disclosure must be a ‘qualifying disclosure’ within s.43B of the 1996 Act and must in the reasonable belief of the worker making it is ‘*made in the public interest*’.

20 10. One of the leading cases in the meaning of ‘made in the public interest’ is ***Chesterton Global Ltd v Nurmohamed*** [2017] IRLR 837. In that case the Court of Appeal held that there are no absolute rules about what it is reasonable to view as being in the public interest. However the Court gave guidance as to four factors which might be relevant in interpreting and applying the public interest test in whistleblowing cases: numbers in the group whose interests the disclosure served; the nature of the interests
25 affected and the extent to which they are affected by the wrongdoing

disclosed; the nature of the wrongdoing disclosed; and the identity of the alleged wrongdoer.

11. Considering these factors, I arrived at the view that the matters raised by the
5 claimant in his grievance are not in the public interest but were more a way of
personal workplace issues serving the claimant's personal interest.

12. Further, the claimant has the burden of proving every element of the
definition of a "qualifying disclosure" in s.43B. The claimant was not therefore
10 protected as a whistleblower. His claim has no reasonable prospect of
success, therefore, and it falls to be dismissed in terms of Rule 37(1)(a), in
Schedule 1 of the Employment Tribunals (Constitution and Rules of
Procedure) Regulations 2013.

15 Employment Judge: Nick Hosie
Date of Judgment: 24 November 2021
Entered in register: 02 December 2021
and copied to parties

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