EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms D Edinboro	v	Jamma Umoja (Residential Services) Ltd

OPEN PRELIMINARY HEARING

Heard at: **By CVP (Croydon)** On: **3/2/2022**

Before: **Employment Judge Wright**

Appearances
For the Claimant: In person
For the Respondent: Ms K Reece – Employment Advisor

JUDGMENT

The claimant does not have a claim for breach of contract and no protected disclosure was made. The claims are dismissed.

REASONS

1. This open preliminary hearing was listed on 8/9/2021 to determine the following issue: whether the claimant's claim of unfair dismissal should be struck out, whether the claimant has brought any other claims and the name of the respondent(s).

2. The issue of the respondent's name was easily resolved. The claimant agreed the correct respondent was Jamma Umoja (Residential Services) Ltd and the respondent's name is so amended. The claimant confirmed that she was not bringing a claim against Mr Crosbie, a director of the respondent.

3. The claimant also accepted that she did not have qualifying service in order to bring a complaint of unfair dismissal under the Employment Rights Act 1996 (ERA), sections 94-98 in Part X.

4. The claimant claimed breach of contract and she identified the breaches as a failure to address her grievance and that she was dismissed without a hearing.

5. The respondent submitted that this was the claimant attempting to bring a claim for unfair dismissal, when she does not have qualifying service, by the 'back door'.

6. The Tribunal is satisfied that the respondent's handbook is non-contractual and the policies it contains are not binding. There is a distinction between the formal contract of employment (page 92) and the handbook (page 110).

7. In the alternative, there was no breach in terms of a failure to address the claimant's grievance. The grievance was addressed and the claimant was provided with the respondent's outcome by letter on 14/9/2020 (page 102). The simple fact is that the claimant disagrees with the outcome. That is not a breach of contract.

8. There is no contractual right to have a hearing before being dismissed. It may make for good industrial relations and had the claimant had qualifying service, may have been relevant for a claim of unfair dismissal. It is not however, a breach of the claimant's contract not to hold a dismissal meeting.

9. In respect of the 'whistleblowing' claim, the claimant set out her case. She said she had made a protected disclosure in a supervision meeting on 29/7/2020. She said that she referred to a social worker colleague CN and her (in the claimant's view) lack of honesty. The claimant said that this amounts to a failure or a likely to be a failure to comply with a legal obligation; which is that social workers should act with honesty (s.43B (1)(b) ERA.

10. The respondent submitted that a vague reference to honesty is not enough to be classed as a breach of a legal obligation and that the reference to it is not in the public interest.

11. The claimant also referred to her case management agenda received on the 24/6/2020.

12. The Tribunal was careful to ensure that the claimant's case was contained in her pleading (the claim form and accompanying documents) and not elsewhere, Chandhok v Tirkey EKEAT/0190/14/KN.

13. The Tribunal finds that the meeting on the 29/7/2020 was referred to in the claim form (page 18). The claimant's own timeline reads:

> 'Had supervision with ML – discussed the incident of being lied about by CN. He asked how this could be addressed and I said I would like to have a meeting with her and receive an apology. He agreed to convene a meeting with her.'

14. At the bottom of that page, the claimant has reproduced her amendment to the notes of the supervision session on 29/7/2020 (page 18). Under the date 6/8/2020 the claimant set out:

> 'Mentioned to MK that I had further to add to his supervision notes. I was informed by him that once I received the notes, I could request amendments to be made. This was my assertion for the supervision amendment – I expressed that I wished it recorded that I thought the way the issue was handled was unfair and bullish. I mentioned that when ML and CN had said we will discuss later, I expected a meeting with him, CN and I, and was surprised to be directed into a meeting with HR [EC]. I asked whether the 'informal meeting' was the first rung leading to dismissal – according to Jamma policy – ML said yes. I asked if in his investigation into the incident whether he checked CCTV to see if I had entered the room. He said he had not as there was no reason to do so due to the fact CN had apologised to him, admitting that I did not enter the room, and that I had only put my head around the door! I said that in a professional and moral way that was a concern to me; as vulnerable residents rely on staff giving true representation in their cases, and CN had not given a true representation of what had occurred in my involvement in a residents' issue. ML said he has noticed a change in me towards CN since the incident, to which I acknowledged that was the case as what I have learnt is I need to be cautious around her; she has told lies about me, and it was not my style to embellish the facts to make them appear worse than they truly are. He asked how things could be put right. I said an apology from CN and agreed to a meeting with her. I added that I am being open and honest about my initiation into "Jamma family" which had not been good.'

15. The Tribunal then considered whether or not the claimant's recollection of what was said at the meeting on 29/7/2020 amounted to a qualifying disclosure according to s.43B ERA and so a protected disclosure under s.43A ERA. The question is whether the disclosure was of information which in the reasonable belief of the claimant was made in the public interest and tended to show that (s.43B(1)(b) a person (in this case CN) has failed, is failing or is likely to fail to comply with a legal obligation to which she is subject.

16. In Kilraine v London Borough of Wandsworth [2018] ICR 1850 the Court of Appeal said that the word 'information' in s.43B(1) ERA has to be read with the qualifying phrase 'tends to show'; the worker must reasonably believe that the information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f) ERA. An example was given of a hospital worker informing their employer that sharps had been left lying around on a hospital ward. If instead the worker had brought their manager to the ward and pointed to the abandoned sharps, and then said 'you are not complying with health and safety requirements', the oral statement would derive force from the context in which it was made and would constitute a qualifying disclosure. The statement would clearly have been made with reference to the factual matters being indicated by the worker at the time.

17. Section 43B(1) ERA requires that, in order for any disclosure to qualify for protection, the person making it must have a 'reasonable belief' that the disclosure 'is made in the public interest'. That amendment was made to avoid the use of the protected disclosure provisions in private employment disputes that do not engage the public interest.

18. There is no general legal obligation to tell the truth. Even if (no finding is made CN did mislead the respondent over the incident in question) the event was not

correctly recounted, that does not automatically mean that CN would not carry out her professional obligations in a way which breaches a legal obligation. Colleagues are entitled to disagree or fall-out, without it meaning that they would not carry out their professional and even regulated duties conscientiously. Of course when giving evidence under oath, or making certain declarations (for example when applying for a passport or completing a tax return) then a statement that the person giving the evidence or completing the form is telling the truth, then there is an obligation and an expectation that the individual will do so. If it is subsequently discovered the individual did not tell the truth, then consequences follow. For example, a person found to be lying on oath can face contempt of court proceedings.

19. The Tribunal finds that there was no disclosure of 'information' which 'tended to show' there was a breach or a failing in respect of a legal obligation. There was speculation from the claimant, but nothing which 'tended' to show CN had, was or was likely to breach any legal obligation which she was subjected to. This was no more than a private disagreement between two employees. There was an incident and they are both entitled to have their own recollection of what happened. Merely saying that a colleague, who is professionally regulated, had misrepresented a situation is not a protected disclosure. There was no allegation that CN had mislead or mistreated vulnerable residents. Had that been the nature of the disclosure, a different view may have been taken.

20. This was no more than a dispute between colleagues; at most a 'spat'. The claimant's statement does not come within the remit of s. 43A ERA.

21. The claimant's statement was no more than a vague allegation which cast doubt upon CN's integrity, in a situation where they are in dispute. It was an ambiguous assertion and no more. As it was not a qualifying disclosure the claimant cannot rely upon any claimed detriments (the probation review meeting and dismissal) which she says flowed from it.

22. In view of that, all the claims are dismissed.

3/2/2022

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Employment Judge Wright

Sent to the parties on:

01 March 2022

For the Tribunal:

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