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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106835/2019
Held in Glasgow on 8, 9 & 10 February 2022

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Employment Judge: F Eccles
Tribunal Members: Ms E A Farrell
Mr J Harla

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Mrs C Marsland

Claimant
Represented by:
Mr R Leslie & Ms M McKillen -
Student Advisors
Strathclyde University
Law Clinic on 8 February 2022 &
Mr R Leslie & Ms C Morisson -
Student Advisors
Strathclyde University
Law Clinic on 9 & 10 February
2022

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Food For Thought

Respondent
Represented by:
Mr H J Grant -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that (i) the claimant was unfairly dismissed by the respondent; (ii) the respondent shall pay to the claimant a basic award of £1,384.62 (3 weeks x £461.54) and a compensatory award of **£8,059.13** & (iii) the claims under Sections **47B & 103A** of the Employment Rights Act 1996 shall be dismissed. (The Recoupment Regulations apply to

the compensatory award. The total monetary award is £8,059.13. The prescribed element is £6,447.25. The period to which the prescribed element relates is 31 January to 31 May 2019. The amount by which the total monetary award exceeds the prescribed element is £1,611.88.)

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REASONS

BACKGROUND

1. The claim was presented on 7 May 2019. The claim was for (i) unfair dismissal for making a protected disclosure in terms of Section 103A of the Employment Rights Act 1996, failing which unfair dismissal in terms of Section 94(1) of the Employment Rights Act 1996 and (ii) detrimental treatment for making a protected disclosure under Section 47B of the Employment Rights Act 1996. The claims are denied. It is the respondent's position that the reason for the claimant's dismissal was redundancy. They deny that the claimant made a protected disclosure and was subjected to detrimental treatment.
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2. The claim was first brought against St Augustine Episcopal Church by whom the claimant claimed to be employed. St Augustine Episcopal Church identified the respondent as the correct party to the proceedings. They disputed that the claimant was an employee and had the right not to be unfairly dismissed. The respondent submitted that the claimant was self-employed. By Judgment dated 20 October 2019, the Tribunal found that the claimant was an employee of the respondent. They were substituted as respondent in the proceedings.
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3. The parties provided the Tribunal with a joint and supplementary bundle of productions which included combined papers apart for the ET1 and ET3 (as amended) (P3). The Tribunal heard evidence for the respondent from Reverend Liz O'Ryan, former Treasurer and Committee Member of the respondent; Mr John Roderick "Roddy" Dyer, Chair of the respondent since 11 November 2018 and Ms Dot Russell, Committee Member of the respondent. The claimant gave evidence. The parties provided the Tribunal with witness statements to stand as their evidence-in-chief.
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4. The claimant was represented by Mr R Leslie and Ms M McKillen, Student Advisors with Strathclyde University Law Clinic on 8 February 2022 and by Mr R Leslie and Ms C Morisson, Student Advisors with Strathclyde University Law Clinic on 9 & 10 February 2022. The respondent was represented by Mr H J Grant, Solicitor.

FINDINGS IN FACT

5. The Tribunal found the following material facts to be admitted or proved; the claimant was first employed by the respondent's predecessor organisation on 1 April 2016. The respondent was registered as a charitable organisation on 15 March 2017. It operates a foodbank from the Community Hall of St Augustine's Scottish Episcopal Church in Dumbarton ("the church"). The claimant was the respondent's only employee at the date of her dismissal on 31 January 2019. The respondent has volunteers, a number of whom are also clients. The claimant was employed as a Project Co-ordinator. She was responsible for the day-to-day management of the respondent including the procurement and provision of food to the respondent's clients. She also provided clients with counselling services. The claimant's salary was £24,000 per annum with an average weekly take home pay of £379.25. At the date of her dismissal, the claimant was aged 55.
6. The respondent is managed by a committee consisting of a Chair, Treasurer, Secretary and Committee Members ("the Committee"). In June 2018, DE was Chair of the Committee. Reverend Liz O'Ryan was Treasurer. Both were Priests of the church. DE line managed the claimant in his capacity as Chair of the respondent. The claimant and DE worked well together. The claimant felt supported and valued. She was an active member of the church.
7. In June 2018, a complaint was made to the Diocese of Glasgow and Galloway ("the Diocese") of which the church is a member. The Diocese are responsible for the appointment and removal of clergy. The complaint was about a relationship between DE and AB who was a client and volunteer with the respondent AB was also and member of the church. The client's partner made the complaint. At the request of the Diocese, the claimant spoke to the client

about her relationship with DE and reported her conversation to the Provincial Safeguarding Officer of the Diocese who was investigating the complaint. The claimant was shocked by the complaint against DE. She had strong views about DE as a married man having a relationship with a client. She considered the client to be a vulnerable adult. She felt protective towards AB. She felt let down by DE. She was angry and upset. She felt disgusted. Around a week after the complaint was made, the claimant met with DE and his wife. The meeting was at the suggestion of Reverend Liz O’Ryan who had been attempting to support the claimant. The meeting did not go well. DE asked the claimant not to discuss the investigation with other members of the church and that AB should be asked to leave the respondent as a client and volunteer and the church. The claimant was reminded that she should protect the confidentiality of those involved in the investigation.

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8. The client, claimant and Reverend Liz O’Ryan were interviewed by the Diocese as part of the investigation. They were requested by the Safeguarding Officer of the Diocese to keep the identity of those involved in the investigation confidential. DE was absent from the church during the investigation. The Vestry Committee, which has responsibility for the day to day running of the church, did not receive formal notification of the complaint. It was investigated by the Diocese.

9. In or around August 2018 Reverend Liz O’Ryan informed the claimant that DE would be returning to his duties at the church. He returned during October 2018. Conditions were attached to his return by the Diocese including supervision by another Priest. On his return, DE asked the claimant not to disclose his relationship with the client to the Committee or the Vestry. The claimant was upset and angry that DE had been allowed to return to the church and continue his duties as a Priest. The claimant was disgusted and let it be known that it was her intention to leave the respondent’s employment. She had stopped attending the church. She was upset and angry that DE remained Chair of the respondent’s Committee. The claimant and DE met on 31 October 2018 to discuss their working relationship. The meeting did not go well. The claimant suggested that DE should stand down as Chair of the respondent. DE

expressed the view that the claimant was causing division in the church and suggested that as she was thinking of leaving anyway it was time for her to find another job.

10. After meeting with DE, the claimant consulted her General Practitioner. She was signed off with work related stress. The following day the claimant arranged to meet Anne Dyer, a friend and member of the Vestry Committee. Reverend Liz O’Ryan is also a member of the Vestry Committee. She was aware that the claimant intended to talk to Anne Dyer for support as a close friend. The claimant met with Anne Dyer the following day. At their meeting, the claimant informed Anne Dyer that DE had been allowed to return to the church and remain on the respondent’s committee following allegations against him of having an inappropriate relationship with a client of the respondent.
11. The claimant hoped that Anne Dyer would share her disgust and report her concerns to the Vestry who would and apply pressure for the removal of DE. Anne Dyer advised the claimant to remain off work. Anne Dyer did not revert to the claimant with any advice. She did not report her conversation with the claimant to the Vestry or any member of the respondent’s Committee.
12. The claimant remained absent from work. DE resigned as Chair of the Committee at the respondent’s AGM on 11 November 2018 (P14/100-101). He remained on the respondent’s Committee. Roddy Dyer was appointed as the Committee’s new Chair. In his report to the AGM, DE reported that the respondent “was *doing very well, - due to (the claimant’s) hard work and commitment and successful applications for funding during the year.*” Reverend Liz O’Ryan reported as Treasurer that the respondent had a surplus of £7,000 which she described as “*a sound place to be*”. She described the donations received for the year as “*phenomenal.*” In her report to the AGM (P13/98-99), the claimant described the respondent’s “*core business*” as “*emergency food aid*”. The claimant reported on the work undertaken by the respondent over the past year. Having decided to leave the respondent’s employment she finished her report by stating; “*I will be moving on in the next financial year to a new challenge and wish (the respondent) continued*”

success" The respondent's financial year ends on 31 March. The claimant was good at her job and has extensive experience of working in the voluntary and community sector. She was confident that she would find a new job within the next six months. She drafted a letter of resignation.

- 5 13. Following his appointment as Chair of the Committee, Roddy Dyer contacted the claimant. He was anxious that she return to work, in particular during the run up to Christmas which is a particularly busy time for the respondent. Roddy Dyer enquired about the claimant's health and sought to encourage her to return to work following the expiry of her Fit Note. Roddy Dyer was aware of
- 10 the claimant's strong feelings over DE being allowed to return to the church and his duties. He was aware that the claimant may feel anxious about returning to work with DE. He sought to reassure the claimant that the respondent recognised its responsibility for her safety at work and referred to the respondent's duty of care and his wish to support her. Roddy Dyer met with
- 15 the claimant on 29 November 2018 when she agreed to return to work on 1 December 2018.
14. The claimant attended a back to work meeting with Roddy Dyer on or about 18 December 2018. During their meeting, Roddy Dyer reminded the claimant that the investigation was confidential and that she should not discuss it. The
- 20 claimant felt frustrated and angry at having to respect the confidentiality of DE. She continued to raise her concerns about DE's return to work with Reverend Liz O'Ryan who sought to support her by suggesting that she focus on her work. The claimant attended work during December 2018. She was hostile towards DE. She would not engage with him. The claimant was upset and
- 25 angry that other members of the church, in particular Reverend Liz O'Ryan, continued to engage with DE. The claimant stopped engaging with Reverend Liz O'Ryan. This caused Reverend Liz O'Ryan upset. The atmosphere at work between the claimant and others working for the respondent, including volunteers, was strained.
- 30 15. The respondent's Committee met on 4 January 2019 (P19/141-143). The meeting was chaired by Roddy Dyer. DE and Reverend Liz O'Ryan were also

in attendance with three other Committee members including Ms Dot Russell. The claimant was unable to attend due to ill health. DE was no longer Chairperson and Reverend Liz O’Ryan was in the process of moving to another parish. DE was in the process of arranging his retirement with the Diocese.

5 Relations between the claimant and others working for the respondent including DE and Reverend Liz O’Ryan remained strained. The Committee discussed the respondent’s “vision” for 2019. Roddy Dyer, as the Committee’s new Chairperson, wanted a renewed focus on the work of volunteers to alleviate food poverty. The claimant had not been informed in advance about

10 what was to be discussed at the meeting. It was agreed that the respondent did not need the claimant’s role of full-time Project Co-ordinator to achieve its “vision” as most of her work could be done by volunteers. The Committee members were unaware of any outstanding applications from which funding might be received to cover wages in the coming year. The view was expressed

15 that, subject to appropriate funding, the respondent would be able to fund a part-time post of Facilitator. The decision was made to terminate the claimant’s contract with the respondent and rely on volunteers. When making the above decision, the Committee members mistakenly believed that the claimant was self-employed. Reverend Liz O’Ryan and Roddy Dyer knew that the claimant

20 had intended to speak to Anne Dyer about her concerns over DE’s return to work. Neither knew what the claimant had said to Anne Dyer. It did not influence their decision to terminate the claimant’s contract. Given the terms of her report to the AGM (13/98-99), the Committee members understood that the claimant intended to move to another job in the next financial year. It was

25 agreed that Roddy Dyer and Reverend Liz O’Ryan would speak to the claimant as soon as possible to inform her that her services would not be required from 31 January 2019. The decision was made to pay the claimant £5,000. This sum presented £2,000 in respect of wages to the end of January 2019 and £3,000 for accrued but unused holiday pay.

30 16. Roddy Dyer and Reverend Liz O’Ryan met with the claimant on 7 January 2019. The claimant was informed of the decision to terminate her contract with the respondent. Roddy Dyer confirmed the position in writing (P20/144). He informed the claimant that;

**7am writing to you to inform you of important changes that were ratified by the (respondents) executive committee at the most recent monthly meeting - Friday 4th January 2019.*

5 *it was agreed at the meeting that there would be a change in the operational structures and objectives of the charity and namely its two main projects. As a result of this agreement, there is unfortunately no future within the organisation to offer out a contract of services for a full-time project worker,*

10 *Considering this decision, it is with regret that I must Inform you of the decision to terminate the Freelancer Agreement that we currently have. I have detailed the breakdown of this termination below, in line with our contractual obligations namely 2.1(a), section 3 and section 5 of that contract. "*

Roddy Dyer went on to thank the claimant for her hard work and commitment and to confirm that the respondent would be happy at any point to provide her with a reference.

15 17. The claimant was angry about the termination of her employment. She appealed against the decision to terminate her employment by letter dated 14 January 2021 (P21/145-1 49). The claimant stated in her letter of appeal (P21/149) that her employment was terminated because she *"could not conspire in allowing DE to continue to be involved with (the respondent) and 3 other charities and not the reasons given"*. There was no mention of the claimant having spoken to Anne Dyer in her letter to the Vestry (P21/147-149).
20 No appeal hearing was held to consider the claimant's appeal.

18. On 14 March 2019, the claimant's sister placed a posting on social media (P22) which was critical of the respondent. In her post (P22), the claimant's sister
25 alleged that the claimant had been *"fired because she refused to be complicit in a cover up"*. There was no mention of the claimant having spoken to Anne Dyer. The respondent considered the contents of the post (P22) to be damaging to their reputation and that it was necessary to respond. They did so by way of a public statement - also posted on social media (P23) - in which
30 they denied having dismissed anyone *"as this does not apply to individuals*

who are self-employed". They gave details of their contract with the "most recent "project co-ordinator" ¹ and the payments made on termination of their contract. The claimant was not named in the post (P23). The respondent referred to lack of funding as the reason for having to terminate the contract of a "full time contractor" Regarding allegations made in the post (P22) against DE, the respondent stated that "this was investigated by the relevant authorities and there was no wrong doing found to have been done". On 19 March 2019, a local newspaper referred to the social media posts (P22 & P23) in an article under the heading "Foodbank charity loses worker to save money". The claimant reacted badly to the respondent's posting (P23) and the article in the local newspaper. She felt upset and angry. The posts on social media exacerbated her stress and anxiety.

19. By the end of January 2019, the respondent was in credit by around £23,000. They continued to receive donations including funding from the Scottish Government in March 2019. Apart from counselling, the claimant's work was undertaken by volunteers. In June 2019 the respondent received notification from West Dunbartonshire Council of a decision to award funding of £25,000 (P27/173), The funding was received in August 2019 around which time the respondent appointed a part time Operational Assistant on a Freelancer Agreement (P25).

20. The claimant has not worked since her dismissal due to continued health problems. She has continued to experience stress and anxiety since her dismissal and has been prescribed antidepressant medication. (P34/199). The claimant feels alienated from her local church community and until recently found the thought of leaving the house on her own stressful. Her anxiety and stress were exacerbated during March 2019 when the respondent responded to her sister's posting on social media and there were reports in the local press. Her health is now improving but she still has anxiety and stress. In terms of income, the claimant has been in receipt of joint Universal Credit with her husband since the termination of her employment.

21. Reverend Liz O’Ryan left the church for her a new parish on 24 February 2019. DE was absent from the church from January 2019 until his retirement in April 2019.

NOTES ON EVIDENCE

5 22. It was not in dispute that the respondent was mistaken about the claimant’s employment status when the decision was made to terminate her employment. The respondent’s witnesses gave their evidence after this issue had been determined. While both Reverend Liz O’Ryan and Roddy Dyer sought to avoid responsibility for the decision to terminate the claimant’s contract, they were
10 adamant that it was because of concerns over funding of wages and a renewed focus on the respondent’s “vision” which involved the work of volunteers to alleviate food poverty. Neither witness was able to explain with any clarity however why there was so little reference in the minutes of the meeting on 4 January 2019 (P19/141-143) to the perceived lack of funding. On balance
15 however, the Tribunal accepted their evidence that they did not know about any funding to pay wages in the coming year and that this played some part in the Committee’s decision to terminate the claimant’s contract. The Tribunal accepted the evidence of Reverend Liz O’Ryan that she could not place any reliance on the possibility of the respondent receiving funding from West
20 Dunbartonshire Council. As she stated in cross examination; *“There was not enough money in the bank to pay the claimant. No funding had been applied for. It would be irresponsible for me and (DE) to leave with the charity in that state”* Whether or not the respondent’s witnesses were correct in their assessment of the respondent’s financial position at the time the decision was
25 made to terminate the claimant’s contract, the Tribunal was satisfied that they did not know about any future funding to pay the claimant’s salary for the coming year and that the Committee considered appropriate to focus on volunteers and operate without a Project Coordinator.

23. The Tribunal also accepted the evidence of the respondent’s witnesses in
30 relation to the issue of whether the claimant was excluded and ostracised at work and preferred it to that of the claimant. The Tribunal was not persuaded

that Reverend Liz O’Ryan sought to ostracise the claimant, rather the reverse. The Tribunal was persuaded by her evidence that, like Roddy Dyer, she sought to support the claimant on her return to work in December 2018. The Tribunal was persuaded that Reverend Liz O’Ryan was taken aback by the claimant’s behaviour towards DE and her level of anger. She described a difficult and deteriorating relationship with the claimant and the claimant’s angry response to her inability to “take sides.” The Tribunal preferred the evidence of Reverend Liz O’Ryan that it was the claimant who was finding it difficult to engage with colleagues at work. Reverend Liz O’Ryan’s evidence was also credible in relation to whether the claimant speaking to Anne Dyer was the reason for deciding to terminate her contract with the respondent. She was open about knowing that the claimant intended to talk to Anne Dyer about her concerns in relation to DE. It was not put to her that she knew the details of their conversation and in any event, the Tribunal was persuaded that it did not play a part in her decision to agree to the termination of the claimant’s contract.

24. Roddy Dyer also sought to distance himself from responsibility for the decision to terminate the claimant’s contract. He denied any detailed understanding of the respondent’s financial situation. He had no detailed recollection of how the decision was made by the Committee to terminate the claimant’s contract. As with Reverend Liz O’Ryan however, the Tribunal was persuaded that Roddy Dyer had concluded, whether correctly or not, that there was no guarantee of funding being available to pay the claimant’s wages for the year ahead. The Tribunal was not persuaded from the evidence before it that he had been put under pressure by DE to terminate the claimant’s contract because she had spoken to Anne Dyer.

25. Dot Russell’s evidence was not challenged when (at paragraph 3 of her witness statement), she referred to discussions about how the respondent would “go forward”. *“Funding applications had not been made and the respondent was running out of money. A change of strategy or, looked at another way, a return to our original strategy or omission (sic) was discussed”* Dot Russell did not know about the claimant speaking to Anne Dyer about DE before the meeting on 4 January 2019 and *“Accordingly, that formed no part of the Committee’s*

deliberations or decisions to end (the claimants) contract with (the respondent)”, (paragraph 4 of her witness statement).

26. The Tribunal found that the claimant had a tendency to overstate events and to see them solely from her own perspective. In particular, the Tribunal found that the claimant had overstated the significance of her meeting with Anne Dyer and her recollection of events was at times influenced by a wish to present evidence that supported her claim. The claimant sought to show that DE, Reverend O’Ryan and Roddy Dyer had colluded to bring about her dismissal at the meeting on 4 January 2019. The Tribunal did not find that the evidence before it supported such a proposition. It was denied by Reverend Liz O’Ryan, whose honesty the claimant was reluctant to challenge and, as referred to above, by Roddy Dyer. The claimant did not challenge Dot Russell’s evidence that there was no discussion at the Committee meeting about the claimant having spoken to Anne Dyer.

15 **ISSUES**

27. The issues to be determined by the Tribunal were identified as follows;

- (i) Did the claimant make a protected disclosure in terms of Section 43A of ERA?
- 20 (ii) If so, was the claimant dismissed for making a protected disclosure?
- (iii) If so, was the claimant subjected to detrimental treatment for making a protected disclosure in terms of Section 47B of ERA?
- (iv) If so, what remedy should be awarded to the claimant?
- (v) If the claimant did not make a protected disclosure, can the respondent 25 show that the reason for dismissal was redundancy?
- (vi) If yes, was the dismissal fair or unfair?
- (vii) If not, what remedy should be awarded to the claimant?

DISCUSSION & DELIBERATIONS

28. As an employee of the respondent, the claimant had the right not to be unfairly 30 dismissed in terms of Section 94(1) of the Employment Rights Act 1996 (ERA).

It was the claimant's primary position that she was dismissed for making a protected disclosure. In terms of Section 103A of ERA an employee shall be regarded 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.

5 29. The Tribunal began by considering whether the claimant had made a protected disclosure. In terms of Section 43A of ERA, a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of Sections 43C to 43H of ERA.

10 30. In terms of Section 43B of ERA, a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the "relevant failures" falling within paragraphs (a) to (f) of Section 43B (1) of ERA. It is important therefore to identify the information that is said to have been disclosed. In the case of the claimant, the information said to have been
15 disclosed lacked clarity and expanded as the claim proceeded. There was no mention of any information being disclosed to Anne Dyer in the claimant's ET1. At a preliminary hearing on 11 November 2020, the disclosure was identified as Anne Dyer being informed that DE *"had engaged in a relationship with a vulnerable client of the (respondent), of which (DE) was Chairman"*. In her
20 amended paper apart (at paragraph 33) the disclosure to Anne Dyer was said to include the information that was contained in the claimant's letter to the Vestry (146) and *"all that had happened since June 2018"*. In her evidence to the Tribunal (at paragraph 70 of her witness statement), the claimant stated that she told Anne Dyer *"what had happened from June 2018 onwards, from
25 the allegations through to my meeting with (DE) the previous afternoon"*. When asked by the Tribunal to clarify what she had said to Anne Dyer, the claimant referred to DE having a romantic relationship with a client of the respondent and that DE had been allowed to return to work without consideration by the Diocese of DE being on the Board of the respondent and other charities. There
30 was no mention of the claimant disclosing information to Anne Dyer in her letter to the Vestry (P21/146-149). The Tribunal did not hear evidence from Anne Dyer.

31. It was not in dispute that the claimant spoke to Anne Dyer after her meeting with DE on 31 October 2018. Reverend Liz O’Ryan gave evidence that she knew the claimant intended to speak to Anne Dyer, as a close friend. While she knew that the claimant intended to speak to Anne Dyer about her concerns over DE, she did not know anything about the detail of what the claimant did say. As referred to in its notes on evidence, the Tribunal found that the claimant’s recollection of events was influenced by a wish to present evidence that supported her claim. Having considered all of the evidence before it, the Tribunal found that the claimant had told Anne Dyer about DE being allowed to return to the church and remain on the respondent’s committee following allegations against him of having an inappropriate relationship with a client of the respondent.

32. The claimant submitted that she had disclosed information that in terms of Section 43B (1) (d) of ERA tended to show that the health or safety of any individual had been, was being or was likely to be endangered. The respondent questioned whether the claimant could, in all the circumstances, have reasonably believed that anyone’s health and safety had been or was in danger by DE returning to the church and the respondent’s committee. The claimant’s reaction to the allegations made against DE was strong and reflected her moral principles. The claimant felt disgusted by allegations of DE having a relationship with a client whom she considered to be a vulnerable adult. She strongly disagreed with the decision to allow DE to return to the church and resume his role as Priest and Chair of the respondent’s Committee. The matter had however been investigated by the Safeguarder on behalf of the Diocese. The client had participated in the investigation. The decision had been taken to allow DE to return to the church and his duties. Conditions were attached to his return. In all the circumstances, the Tribunal concluded that while the claimant genuinely believed that the information disclosed to Anne Dyer was in the public interest and tended to show that DE returning to the church endangered the health and safety of the respondent’s clients, her belief was not reasonable. The claimant was entitled to disagree with the outcome of the investigation. She was entitled to feel that it was contrary to her moral principles. This was not sufficient however, to persuade the Tribunal that that

the claimant held a reasonable belief that the information disclosed to Anne Dyer tended to show that the health and safety of any individual had been, was being or was likely to be endangered.

33. The claimant also sought to show that the information she disclosed to Anne Dyer tended to show that the danger to the health and safety of clients from DE returning to work had been or was likely to be deliberately concealed in terms of Section 43B(1)(f) of ERA. For the reasons given above, the Tribunal was not persuaded that the claimant could, in all the circumstances, reasonably believe this to be the case. The complaint against DE had been investigated by the Diocese. Members of the respondent's Committee including the Chairperson and Treasurer were aware of the investigation and that DE had been allowed to return to work. It was not in dispute that the claimant had been reminded about the requirement to respect the confidentiality of those involved in the investigation, including the client. The Tribunal was not persuaded that this was sufficient to find that the claimant held a reasonable belief that information about the investigation and the danger to the health and safety of clients from DE returning to work had been or was likely to be deliberately concealed.

34. If the Tribunal is wrong and recognising that the claimant does not have to prove that her belief is true and the threshold for proving reasonable belief in terms of Section 43B (1) of ERA is low, the Tribunal went on to consider the further requirements that must be met for the disclosure of information to be protected. Sections 43C to 43H of ERA detail the methods by which a worker can make a disclosure for it to be protected. The claimant submitted that by making a disclosure to Anne Dyer she had complied with the provisions of Section 43C(1)(b)(ii) of ERA which provide that where the worker reasonably believes that the relevant failure relates solely or mainly to a matter for which a person other than her employer has legal responsibility, the disclosure can be made to that other person. The claimant did not submit that it was reasonable for her to make the disclosure to Anne Dyer because the conditions in Section 43G (2) of ERA (risk of detrimental treatment, risk of evidence being concealed or destroyed or because she had made a previous disclosure) were

applicable or that it was an exceptionally serious failure in terms of Section 43H of ERA.

35. The claimant submitted that Anne Dyer was the right person to whom she should disclose information because the Vestry, of which she was a member, had established the respondent, oversaw the day to day running of the church and the respondent continues to use the church hall. The claimant submitted that while the Vestry played no role in the running of the respondent, it was kept up to date with important affairs. The Tribunal did not doubt that the claimant genuinely believed that Anne Dyer should be made aware of how she felt about DE returning to work and that she hoped Anne Dyer would pass on the information to other members of the Vestry. From the evidence before it however, the Tribunal was not persuaded that the claimant could reasonably have believed that DE endangering the health and safety of the respondent's clients was solely or mainly a matter for which the Vestry had legal responsibility. The Tribunal did not agree with the claimant's submission that it should infer from DE having retired in April 2019 that the Vestry was the appropriate body to whom to disclose information about DE endangering the health and safety of clients.

36. It was not in dispute that the Diocese are responsible for the appointment and removal of clergy, including DE. The claimant spoke to Anne Dyer because she was a close friend and a member of the Vestry. There was no persuasive evidence that she believed the Vestry had the power to remove DE from his position in the church. The claimant had hoped that Anne Dyer and other members of the Vestry would share her sense of disgust and at best apply pressure to those who were responsible for DE's position in the church. The Tribunal was not persuaded however that all the circumstances, the claimant was able to establish that she had disclosed information to a person whom she reasonably believed was solely or mainly responsible for DE endangering the health and safety of the respondent's clients in terms of Section 43G (2) of ERA.

37. In all the circumstances, the Tribunal was unable to conclude that the claimant had made a protected disclosure within the meaning of Section 43A of ERA. If, however the Tribunal is wrong about this, it went on to consider whether the claimant disclosing information to Anne Dyer was the reason, or if more than one, the principal reason for her dismissal.

38. From the evidence before it, the Tribunal was not persuaded that the principal reason for the claimant's dismissal was for disclosing information to Anne Dyer. The decision to dismiss the claimant was made at the respondent's Committee meeting on 4 January 2019. The Tribunal accepted the evidence of Roddy Dyer and Reverend Liz O'Ryan that informing Anne Dyer of her concerns about DE was not the principal reason for the decision to terminate the claimant's contract. They both knew that the claimant intended to speak to Anne Dyer. They were aware that the claimant was concerned about DE's return to work and that this would probably have been discussed with Anne Dyer. They were not aware of any of the detail of the meeting or what was said by the claimant. It was their evidence, which the Tribunal accepted as credible, that the claimant speaking to Anne Dyer did not lead them to conclude that the claimant should be dismissed. Dot Russell's evidence that she did not know anything about the claimant speaking to Anne Dyer was not challenged. It was also not in dispute that Roddy Dyer met with the claimant after the purported protected disclosure and encouraged her to return to work. The claimant was asked by Roddy Dyer, following her return to work, to respect the confidentiality of the investigation by the Diocese. While the Tribunal did not doubt that this was something that the claimant found frustrating, it was not persuaded that it was said to the claimant because she had met with Anne Dyer. Similarly, the Tribunal could not find from the evidence before it that DE had asked Roddy Dyer to raise the issue of confidentiality with the claimant because she had spoken to Anne Dyer. It was not in dispute that relations between the claimant and DE were strained following his return to work, but this did not lead the Tribunal to conclude that DE had brought about the claimant's dismissal because she had discussed with Anne Dyer the investigation into his relationship with a client and subsequent return to work. By the time of the meeting on 4 January 2019, DE was no longer Chairperson of the Committee.

39. The claimant, submitted the respondent, relies on her belief alone to show that her conversation with Anne Dyer and/or concerns generally about DE remaining as a Priest and being involved in the respondent's organisation, were the reason for the decision being made to terminate her contract. For this to be the case, submitted the respondent, there would have to be a conspiracy between the three people who knew that she had or at least intended to speak to Anne Dyer. Not only would they have had to conspire to remove the claimant from her employment, but they would have had to influence the other members of the Committee to agree to their purported wish to remove the claimant from her employment. This, submitted the respondent, is implausible and based on supposition as opposed to the evidence of the respondent's witnesses who were present when the decision was made.

40. For the Tribunal to find that the claimant was dismissed for making a protected disclosure, submitted the respondent, it would have to have been misled by each of the respondent's witnesses. The Tribunal, submitted the respondent, would have to find as fact something the claimant believes - based on suspicion - and which is unsupported by any reliable evidence. From the evidence before it the Tribunal was unable to find that DE had sought to persuade other members of the committee to terminate the claimant's contract because she had disclosed information to Anne Dyer. It was accepted that Anne Dyer had not spoken to any member of the Committee. There was no persuasive evidence of DE, Reverend Liz O'Ryan and Roddy Dyer having colluded to bring about the termination of the claimant's employment or of Committee members having been unwittingly persuaded by DE to terminate the claimant's contract because she had disclosed information to Anne Dyer about the investigation and his return to work.

41. As an alternative to making a protected disclosure, the claimant submitted that she believes her employment was terminated because she felt unable to conspire in allowing DE to continue working with the respondent and for raising concerns generally about DE's relationship with the client. The Tribunal did not find that there had been a conspiracy to allow DE to remain on the respondent's Committee or to be involved in their work. The allegations against DE had been

investigated by the Diocese. A decision had been made to allow DE to return to his work which included, for a short period, membership of the respondent's Committee. The claimant was reminded about her obligation to respect the confidentiality of those involved in the investigation. The Tribunal did not find however that anybody had prevented her from speaking to Anne Dyer, including Reverend Liz O'Ryan who assumed that the claimant intended to discuss her concerns about DE and his return to work. In all the circumstances, the Tribunal decided that the claim under Section 103A of ERA should be dismissed.

42. The Tribunal, having concluded that the claimant was not dismissed because she made a protected disclosure went on to consider whether the claimant was dismissed for a potentially fair reason. In terms of Section 98(1) of ERA, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for the dismissal. The respondent's sought to show that the claimant was redundant, a potentially fair reason in terms of Section 98(2) (c) of ERA. An employee who is dismissed shall be taken to be dismissed by reason of redundancy if, in terms of Section 139(1)(b) of ERA, the dismissal is wholly or mainly attributable to the fact that the requirements of the employer's business (i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer has ceased or diminished or is expected to cease or diminish. (It was not the respondent's position that the claimant was redundant because they intended to cease operating in terms of Section 139(1) (a) of ERA).

43. Following the guidance in the case of **Murray and anor v Foyle Meats Ltd 1999 ICR 827, HL**, the Tribunal began by considering whether one of the situations described in Section 139(1)(b) of ERA existed at the time of the claimant's dismissal. The respondent, submitted Mr Grant, was entitled to decide that they could rely on volunteers and reduce overheads and thereby increase funds available for food distribution by not employing the claimant. The claimant challenged the respondent's assessment of their financial position when the decision was made to terminate her employment. There had

5 been no concerns expressed at the AGM held in November 2019 when the respondent's finances were described as "*a sound place to be*". The minutes of the meeting on 4 January 2019 (P19/141-143) contained no record of any discussion about the respondent's financial position other than expressing the hope that, subject to finding appropriate funding, the respondent would be able to fund a part-time post of Facilitator. There was no persuasive evidence that apart from counselling, which was a small part of the claimant's work, that there was a diminution in the work undertaken by the claimant. It was not in dispute however that the Committee decided at their meeting on 4 January 2019 that
10 Roddy Dyer's wish to focus on the core objective of the respondent - referred to as the respondent's "vision" - did not need the post of Project Co-Ordinator. The respondent submitted that they no longer required employees of any kind going forward as they intended to rely on volunteers and that this meant the end of the employment of its only employee and therefore the claimant's
15 dismissal.

44. The second question, following the guidance in *Foyle Meats Ltd (supra)*, was whether the claimant's dismissal was wholly or mainly attributable to a diminution of work of the type undertaken by the claimant. There were a number of circumstances to be taken into account. It was not in dispute that at
20 the time of the claimant's dismissal, the respondent did not consider the claimant to be an employee. Since DE had returned to work, the claimant had made her position clear that she was disgusted by his alleged conduct and strongly opposed to his return to work. Relations between the claimant and others working for the respondent including DE, Reverend Liz O'Ryan and
25 volunteers were strained. The claimant had informed the committee before the AGM in November 2018 that she intended to leave in the next financial year. Reverend Liz O'Ryan was moving to another parish. Roddy Dyer was the new Chairperson with a renewed vision about how to use the respondent's resources. Reverend Liz O'Ryan described the decision to terminate the
30 claimant's contract as a response to a "*multi-faceted set of circumstances.*" In all the circumstances, the Tribunal was unable to conclude that the claimant's dismissal was wholly or mainly attributable to the respondent no longer requiring an employee to undertake the claimant's work as a Project Co-

Ordinator. In all the circumstances, the respondent was unable to show that the principal reason for dismissal was that the claimant was redundant.

45. The respondent having failed to show a potentially fair reason for dismissal, the Tribunal found that the claimant's dismissal was unfair. At the time of dismissing the claimant, the respondent did not recognise that the claimant was an employee with employment protection rights including the right not to be unfairly dismissed. As a result, when it came to terminating the claimant's employment, the respondent's conduct did not in any event fall within the range of a reasonable employer's conduct. It was the respondent's understanding that they were only required to give the claimant notice once the decision had been made that the post of Project Coordinator was no longer required. There was no warning or consultation. There was no consideration given to the possibility of alternative work or other steps to avoid dismissal, including part time work. There was no consideration given to the claimant's appeal against dismissal. The respondent did not dispute that the claimant's dismissal lacked a fair procedure. The respondent had failed to recognise that the claimant was an employee with employment protection rights.

46. On balance, the Tribunal found that had the claimant not been dismissed, there was every likelihood that she would have remained in the respondent's employment until the end of May 2020 by which time she would have left to take up alternative employment. A fair dismissal would have included a warning and a period of consultation. The claimant would have had an opportunity to reassure the respondent about future funding. There would have been discussions about alternatives to dismissal, including part time working. The claimant had however decided to leave the respondent's employment. She had notified the respondent that she would be leaving in the next financial year. In all the circumstances, the Tribunal was satisfied that had she not been dismissed in January 2020, there was every likelihood that the claimant would have left the respondent's employment in any event by the end of May 2020 to take up alternative employment.

47. The claimant also had a claim of detrimental treatment for making a protected disclosure under Section 47B of the Employment Rights Act 1996. The detrimental treatment was identified as the claimant being excluded and ostracised following her return to work; warned about her duty of confidentiality; advised by DE to find alternative work and since leaving the respondent's employment, subjected to criticism by the respondent on social media.
48. For the reasons given above, the Tribunal was not persuaded that the claimant had made a protected disclosure. Should the Tribunal be wrong about this, it went on to consider whether the claimant was subjected to detrimental treatment under Section 47B of ERA for disclosing information to Anne Dyer. In terms of Section 47B (1) of ERA, a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, (i) by their employer, (ii) by another worker of the employer in the course of their employment or (iii) by an agent with the employer's authority on the ground that the worker made a protected disclosure.
49. In terms of the alleged detriments, the Tribunal was not persuaded that the claimant had been excluded and ostracised at work. The Tribunal accepted the evidence of the Reverend Liz O'Ryan that it was the claimant who had distanced herself from other members of the church. The Tribunal found that Reverend Liz O'Ryan was genuinely upset and taken aback by the claimant's conduct towards DE and towards her when she was unable to agree with the claimant over how DE should be treated. Reverend Liz O'Ryan had sought to support the claimant by suggesting that she focus on her work. Similarly, the Tribunal found that Roddy Dyer sought to reassure the claimant that she would be supported on her return to work. It was not in dispute that Roddy Dyer had requested that the claimant respect the confidentiality of those involved in the investigation. It was also not in dispute that the respondent had placed a posting on social media that, without naming her, had detailed the circumstances of the claimant leaving their employment. Both acts were detrimental to the claimant. She felt frustrated and angry at having to respect the confidentiality of DE. She felt upset and angry at the respondent's post on social media detailing the circumstances of her leaving their employment.

50. In terms of Section 48(2) of ERA, it is for the respondent to show the ground on which the act was done. The Tribunal was satisfied that in both cases the respondent was able to show why the detrimental act was done and that it was not on the grounds that the claimant had disclosed information to Anne Dyer.

5 In the case of the claimant being reminded about confidentiality, this was to protect the privacy of those involved in the investigation. It was not in response to the claimant disclosing information to Anne Dyer. It was to caution the claimant against speaking generally about matters that were reasonably considered to be of a private nature and the subject of an investigation by the

10 Diocese. The posting by the respondent on social media was shown to have been done in response to the posting by the claimant's sister (P22) in which serious allegations were made about the respondent. The respondent considered it necessary to respond to the allegations in the post (P22). It was this and not the claimant disclosing information to Anne Dyer that led the

15 respondent to place the posting on social media. The claimant's evidence that DE had suggested she leave the respondent's employment was not challenged. This however took place before the claimant spoke to Anne Dyer and could not therefore have been done on the grounds that the claimant disclosed information to Anne Dyer. The Tribunal concluded that in all the

20 circumstances, the claim of detrimental treatment under Section 47B of ERA would have failed had the Tribunal found that the claimant made a protected disclosure to Anne Dyer. The claim under Section 47B of ERA shall therefore be dismissed.

51. In terms of compensation, the claimant is entitled to a basic award of *

25 .£1,384,62 (3 weeks x £461.54). She is also entitled to a compensatory award for unfair dismissal. In terms of Section 123 of ERA, the compensatory award should be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken

30 by the respondent. The claimant has not sought alternative employment since her dismissal. She has felt too unwell. In submissions made on her behalf, reference is made to the claimant's feelings of alienation from people at work whom she previously considered to be good friends and subsequently by the

wider church community. The claimant reacted badly to the complaint made against DE and the decision that he should be allowed to return to work. This adversely affected her health. She had been absent from work with stress and anxiety before her dismissal. Her health did not improve after her dismissal.

5 The Tribunal found that the claimant's condition was exacerbated and prolonged by feelings of alienation from the wider church community and the postings on social media. This was after the claimant's dismissal. The Tribunal did not accept the claimant's submission that had she not been unfairly dismissed, "*in the nature that she was,*" she would not have suffered from ill
10 health and would have been able to secure alternative employment and subsequently mitigate her losses.

52. The Tribunal did not find that the respondent caused the claimant's illness. It existed at the time of the claimant's dismissal and was exacerbated and prolonged by events that took place after her dismissal. Having considered the
15 authorities referred to by the claimant - ***Devine v Designer Flowers Wholesale Florist Sundries Ltd 1993 IRLR 517*** and ***Dignity Funerals Ltd v Bruce 2005 IRLR 189*** - the Tribunal was not persuaded that in all the circumstances the claimant's ill health in the period after dismissal was caused to any material extent by the dismissal itself. There were other factors, primarily
20 the claimant's reaction to the complaint against DE and his subsequent return to work that caused the claimant to become and remain unwell.

53. It was not in dispute that the claimant was good at her job and has extensive experience of working in the voluntary and community sector. She expected to obtain alternative work within 6 months of deciding in November 2018 to leave
25 the respondent's employment. She had intended to leave during the new financial year. In all the circumstances, the Tribunal decided that the claimant should be awarded compensation to the end of May 2019. The claimant was paid to the end of January 2019. Based on her net weekly pay of £379.25 the Tribunal calculated that a just and equitable sum to compensate the claimant
30 is £6,447.25 (17 weeks x £379.25).

54. The claimant also sought an increase to any compensation awarded for failure by the respondent to comply with the relevant ACAS Code of Practice. The Tribunal was satisfied that in terms of Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992, the ACAS Code of Practice on Disciplinary and Grievance Procedures applied to the proceedings of unfair dismissal, there had been a failure to comply with that Code and the failure was unreasonable. The Tribunal was not persuaded that the respondent's failure to recognise that the claimant was an employee could, in all the circumstances, be relied upon as a satisfactory explanation for failing to follow the procedure set out in the ACAS Code of Practice. The respondent did not dispute that there had been no meeting with the claimant in advance of her dismissal and they had failed to respond to the claimant's appeal. The Tribunal considered that in all the circumstances it was just and equitable to increase the compensatory award by 25%. The total award of compensation is therefore £8,059.13 (£6,447.25 plus £1,611.88).

55. As the claimant has been in receipt of Universal Credit, the recoupment provisions will apply to the compensatory award. For the purposes of recoupment, the total monetary award is £8,059.13. The prescribed element is £6,447.25. The period to which the prescribed element relates is 31 January 2019 to 31 May 2019. The amount by which the total monetary award exceeds the prescribed element is £1,611.88.

Employment Judge: Frances Eccles
Date of Judgment: 22 April 2022
Entered in register: 04 May 2022
and copied to parties