



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Flanagan v **Respondent** The London Fire Commissioner

**Heard at:** Watford Employment Tribunal (hybrid) **On:** 28-31 March 2022

**Before:** Employment Judge Cowen  
Mrs Bhatt  
Mr Woodward

## Representation

Claimant: Mr Tomison (counsel)

Respondent: Mr Harding (counsel)

## RESERVED JUDGMENT

1. The respondent shall pay the claimant £7252 in compensation for breach of s. 146 TULRCA.
2. The claimant’s claim under s.47B ERA is dismissed.

## REASONS

### Introduction

1. The claim arises from the claimant’s employment with the respondent as a firefighter since 1 December 1997.
2. The claimant issued his claim on 10 January 2020 for detriment on the grounds of trade union activity contrary to s.146 TULRCA 1992 and whistleblowing contrary to s.47B ERA 1996. An ET3 was filed which denied the claims and a case management order was made on 11 June 2020 giving both parties directions to prepare for the final hearing.
3. The case was listed before a full Tribunal panel on 28,29,30,31 March 2022 and was heard in a hybrid manner, with witnesses and parties appearing online.
4. The parties produced a bundle of documents, an agreed cast list, chronology, and witness timetable. The claimant provided a witness statement for himself (plus a supplementary) and the respondent provided witness statements on behalf of Mr Johnson, Mr Tuhill, Mr Thompson, Mr Hearn and Ms Gibbs. All of them gave evidence under oath/affirmation in

support of their statements and were subject to cross examination, except for Ms Gibbs who was in Portugal and could not therefore give evidence from abroad. Her evidence was read and appropriate weight placed upon it, due to the lack of cross examination.

5. The claimant's counsel provided both a written opening submission and a closing submission. The respondent's counsel provided a closing note. An updated List of Issues was also provided by the claimant at the start of the hearing. Whilst the respondent raised objection to this, the Tribunal were satisfied that the updated list was reflective of the issues to be considered and accepted the document.
6. The issues for the Tribunal to consider were set out as follows:

**Trade union detriment- s.146 TULRCA**

- a. *It was decided that the Claimant would be transferred from West Hampstead Fire Station to Stanmore Fire Station. There are two distinct decisions;*
  - i. *The initial decision communicated on 23 August 2019; and*
  - ii. *Andy Hearn's decision by letter on 30 October 2019 to maintain the transfer to Stanmore Fire Station.*
- b. *Do they amount to 'detriments'?*
- c. *Was the Claimant taking part in the activities of an independent trade union?*
- d. *The Claimant was the Branch Representative of the West Hampstead FBU Branch, and he relies on his general activities of acting as the first point of contact for members within the West Hampstead FBU Branch, providing advice and assistance to members, and escalating issues for members within the FBU to Jim Kearns, the FBU NW Area Rep. Further the Claimant relies on four particular instances where he performed those activities in assisting the following members:*
  - i. *Ross Powell,*
  - ii. *Matthew Lloyd*
  - iii. *Martin Hoare, and*
  - iv. *Matthew Howard.*
- e. *If so, was the sole or main purpose of the transfer to penalise the Claimant for having taken part in any or all of those activities?*
- f. *If not, was the sole or main purpose of the decisions to prevent or deter the Claimant from taking part in any or all of those activities?*
- g. *The Respondent's case is that the Claimant was transferred out of West Hampstead fire station because of his conduct toward his Watch Manager (Adam Barnett), who had provided a statement for the purposes of disciplinary action taken against the Claimant and because of management relationships generally, particularly with regard to his Station Manager (Keith Williams).*

**Protected disclosure detriment – s.47B ERA 1996**

**Qualifying disclosure**

- h. The Claimant's case is that on 29 October 2019 during the appeal hearing the Claimant told DAC Hearn that SM Williams had created a toxic atmosphere at the station with his bullying of members and overzealous disciplining. The Claimant's case is that he referred to the treatment of three other employees: CM Powell, FF Lloyd and FF Hoare. Was this said?*
- i. Did this amount to disclosure of information?*
- j. If so, was the disclosure made, in the Claimant's reasonable belief, in the public interest?*
- k. If so, did the disclosure, in the Claimant's reasonable belief, tend to show that the respondent had failed, was failing and was likely to fail to comply with a legal obligation? The legal obligations relied on are:
  - i. The implied duty not to seriously damage and destroy trust and confidence within the Claimant's, and his fellow firefighters', contracts of employment; and*
  - ii. The implied duty to take reasonable care to ensure the safety of employees at work within the Claimant's, and his fellow firefighters', contracts of employment.**

**Detriment**

- l. The Claimant's case is that by letter dated 30 October 2019 DAC Hearn maintained the decision to transfer the Claimant to Stanmore Fire Station despite WM Barnett leaving the station.*
- m. Does this amount to a 'detriment'?*
- n. If so, was the act done on the ground that the Claimant had made the protected disclosure above?*

**Remedy**

- o. What is the appropriate award for injury to feelings?*

**Facts as found by the Tribunal**

- 7. The claimant started work as a firefighter on 1 December 1997 and worked on Red Watch at West Hampstead Fire Station from 2004. Since 2017 he has been a representative of the Fire Brigade Union, a recognised trade union and was the branch representative for West Hampstead fire station at the relevant time. This made him the first point of contact for members who

wished to gain the advice or support of their union.

8. The claimant's contract of employment contained a mobility clause 8 which stipulated that:

*"Your appointment is to the service of the Authority without limitation to any particular establishment or station and the right is reserved to transfer you to any post in the London Fire Brigade as may be required which is appropriate to your role."*

9. The FBU is a hierarchical organisation, which mirrors the hierarchical nature of the Fire Service itself. The claimant therefore dealt with matters relevant to the union at station level. Anything which required further input from an area manager would be dealt with by an area union representative.
10. The claimant was disciplined twice by his employer. Once in 2015 when he was given an 18 month final written warning for an argument with a colleague and another in December 2017 when he disciplined for tweets he wrote about an MP and former chair of the London Fire and Emergency Planning Authority. At a disciplinary hearing in March 2018 he was issued with a 12 month final written warning. This warning had just lapsed, at the time when a further incident occurred.
11. In Summer 2018, the claimant helped Mr Lloyd to contact the BAME representative for the FBU, after he believed an issue of race discrimination had occurred. The claimant put him in touch with the correct FBU representative.
12. Around the same time the claimant assisted Mr Hoare by speaking to him by phone and giving him advice.
13. Around February/March 2019 the claimant assisted an FBU member named Mr Powell who had an issue in relation to being transferred to a different Watch (rota system). The claimant spoke to Mr Powell and then passed the matter on to Jim Kearns, the North West area secretary.
14. On 30 March 2019 there was a charity car washing event at West Hampstead fire station. The Conservative Association set up a stall opposite the station during the course of the afternoon and the Claimant used a loudhailer to make comments such as "dirty politics that side of the street, clean cars this". This came to the attention of Watch Manager Adam Barnett who told the claimant to stop, which he did.
15. Later the same day an ex Conservative counsellor sent out a tweet referring to 'disgraceful behaviour from on duty firefighters'. The claimant responded to the tweet by replying, making reference to the reasons why the counsellor was removed from his position. This came to the attention of the Station Manager Keith Williams, who had an initial interview with the claimant about it and then asked another manager to investigate the incident. The claimant was also interviewed as part of that process. A disciplinary hearing was convened and the claimant was issued with a final written warning for 18 months on 11 June 2019.

16. The same day the claimant attended a meeting with Mr Barnett to 'clear the air'. The meeting was not acrimonious, but both men were annoyed by the actions of the other. During the meeting Mr Barnett said he was unhappy with the claimant. Both men knew they had to continue to work together and the claimant told him that it was now a closed matter and that they had to move on. Thereafter the claimant worked with Mr Barnett, Mr Williams and others without any problem. He did not initiate conversation with Mr Williams but did not ignore him.
17. On 15 July 2019 the claimant wrote to Deputy Commissioner Tom George, Director of Operations to ask him to assist with the outcome of his disciplinary on the basis that Mr George had also recently engaged with Mr Coleman via Twitter. Mr George passed on the claimant's email to Mr Tuhill, before responding to the claimant to say he could not intervene. Upon receiving that email, Mr Tuhill notified Mr Hearn that he wished to move the claimant to another station.
18. The respondent has a policy entitled 'Transfer Policy' which allows staff to be transferred between places of work if business need requires it. The policy refers to a points system to score and analyse the need for such a move. The policy describes a compulsory transfer process, but does not suggest that a managerial transfer can be made without such a process.
19. On 23 August 2019 the claimant was told by Borough Commander Simon Tuhill that he was to be compulsorily transferred to Stanmore Fire Station. He was told that the reason was due to strained relationships, by which he meant that the claimant had challenged Mr Barnett after the disciplinary hearing. He was also told that his behaviour at the event in West Hampstead was inappropriate and that he could not be trusted that it would not happen again. The second of these reasons was acknowledged in a later grievance hearing to be inappropriate and not relied upon as a reason.
20. The timing of the notice to transfer came on the day which the claimant left to go on a family holiday. He was therefore unable to take formal action until he returned to the UK and to work.
21. The claimant raised a grievance about his transfer on 5 September 2019, pointing out that Mr Barnett had been temporarily transferred away from West Hampstead and therefore there was no strain in their relationship. He also raised the point that he had been given a sanction for the incident at the event in West Hampstead and this amounted to a further sanction. Shortly after this on 13 September 2019 he was signed off sick with stress.
22. A grievance hearing was held on 26 September 2019 at which the claimant was represented by his trade union. All his points were aired during the meeting. The claimant referred in the meeting to the fact that he felt that his move was due to his trade union activity. Mr Thompson obtained a statement from Mr Williams after the grievance hearing, in which Mr Williams said that there was a strain on the relationship between the claimant and Mr Barnett which could lead to further disciplinary actions. The outcome of the grievance was that the transfer was upheld on 7 October 2019. Mr Thomson's outcome letter said that it had been reported to him by Mr Williams that the claimant had challenged Mr Barnett. Mr Thompson did

acknowledge that the claimant should be given an opportunity to improve and this was not therefore a valid reason to transfer.

23. The claimant raised an appeal and a hearing was held on 29 October 2019 by Deputy Assistant Commissioner Hearn. At the meeting the claimant read out a document (p424 bundle) which referred to the fact that the claimant believed that he was being moved due to his trade union activity. He also referred to Mr Williams having created a “toxic environment to work at west hampstead”. The claimant also highlighted the fact that Mr Barnett had moved from West Hampstead and therefore the difficult relationship issue was no longer live. His statement did not say that Mr Williams had been bullying or used overzealous disciplining. He did refer to some particular cases, which he said Mr Williams had caused others to move away from West Hampstead. The claimant made no direct reference to there having been unlawful behaviour or failure to uphold a legal obligation by the respondent.
24. The appeal was not upheld and Mr Hearn wrote to the claimant on 30 October 2019 outlining the fact that he remained concerned that despite Mr Williams moving away, he had concerns that further possible breakdowns in relationships might occur. Mr Hearn did not dispute the claimant’s trade union position but denied that the move was for that reason. The claimant remained at Stanmore fire station until March 2022 when he returned to West Hampstead.
25. On 6 December 2019 the claimant raised a further complaint. This he outlined as bullying and harassment. In correspondence with HR it became clear over the course of the emails that the claimant was raising issues of whistleblowing. On 30 December 2019 the claimant told HR that he was invoking the whistleblowing procedure and on 16 January 2020 the claimant provided details of what he now asserts was the whistleblowing he had undertaken at the meeting with Mr Hearn. This was the first time matters had been spelled out in such detail.

## The Law

### Trade Union Detriment

26. S.146 TULRCA states:

*“(1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—*

*...*

*(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so ...*

*(5) A worker or former worker may present a complaint to an employment tribunal on the ground that he has been subjected to a detriment by his employer in contravention of this section ...*

27. The test under this part is an objective one, to be decided by the Tribunal. ; University College London v Brown (UKEAT/0084/19/VP)
28. The burden of proof lies on the respondent under s.148 TULRCA save for the fact that the claimant must show a prima facie case. On that basis it is also open to the Tribunal to infer, from facts shown by the claimant, that the sole or main purpose is to deter him from taking part in the activities of an independent trade union.
29. The issue of the 'sole or main purpose' is a subjective one, which requires consideration of the mind of the employer at the time; UCL v Brown (above).

### Whistleblowing

30. In order to claim that a detriment has been made as a result of a protected disclosure, the claimant must show that such qualifying disclosure has been made.
31. s.43B ERA sets out that a 'qualifying disclosure' is a disclosure of information which in the reasonable belief of the worker making the disclosure tends to show that one of a number of types of action has, or will occur. This includes that a criminal offence has or will be committed, or that a failure to comply with a legal obligation has or will occur. The worker making the disclosure must do so in the public interest.
32. The content of the disclosure must show 'information', which has been distinguished from an 'allegation'. Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325, EAT. Although these are not mutually exclusive. 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) . Whether it meets that standard is a matter for the judgment of the tribunal in the light of all the facts of the case.
33. s.43C ERA sets out that the disclosure should be to a representative of the employer.
34. Whether the claimant's belief is reasonable involves applying a two stage test. Firstly to identify if the claimant believes that the information shows one of the matters listed in s,43B(1)(a)-(f) and if so, whether objectively that belief is reasonable; Babula v Waltham Forest College [2007] EWCA Civ 174
35. The Tribunal must also consider whether the reasonable belief of the employee, the disclosure of the information was in the public interest, i.e this cannot be purely for the benefit of the claimant himself.
36. If the claimant can show that the disclosure made fulfils these requirements, then they must also show that the detriment was carried out because the claimant made the protected disclosure. It therefore is essential that the protected disclosure precedes the act of detriment or dismissal.

37. The law on injury to feelings compensation specifically sets out that it is a matter of compensation, not of punishment of the respondent.
38. The levels of award have been compared to those of personal injury tortious damages, but guidance was first set out in detail in Vento v Chief Constable of West Yorkshire Police (No2) 2003 ICR 318, CA. There is flexibility within the bands and these have been updated to reflect inflation as set out in Simmons v Castle 2012 EWCA Civ 1288, CA and subsequently in De Souza v Vinci Construction (UK) Ltd 2018 ICR 433, CA.
39. The Tribunal is not obliged to make an award in the band identified by the claimant but must have regard to it.

## **Decision**

### Was there a detriment?

40. The Tribunal considered whether the decision communicated on 23 August 2019 to transfer the claimant to Stanmore amounted to a detriment. The Tribunal took into account the fact that the claimant had worked in West Hampstead for 15 years and that the transfer meant a change of location and his commute to work, but also a change of team. Given the nature of the work, the claimant felt uneasy about having to learn to trust and work with a new team. It also meant that his duties as a station representative could not be carried out 'on the spot'. The claimant told us and we accept that he was in telephone communication with his former colleagues, as no-one else took on the role of representative.
41. The Tribunal also took into account the fact that the claimant's contract gives the respondent the right to change his location, upon reasonable notice. The claimant was given 28 days notice of this change. Whilst the location and team changed, his pattern of work would not change. The respondent had a policy under which transfers could be made but did not adhere to the policy on this occasion.
42. The Tribunal also rejected the submission of the respondent that there was no detriment as the claimant was allowed to continue his trade union duties after he moved to Stanmore. The Tribunal were satisfied that the transfer removed the claimant from direct contact with the colleagues he had been supporting and with whom he worked on a day to day basis.
43. The Tribunal concluded that the transfer to Stanmore, whilst not strictly a breach of a contractual term, would amount to a detriment to the claimant.

### Was the claimant taking part in a trade union activity?

44. The Tribunal then considered whether the claimant was taking part in a trade union activity. The FBU is an independent trade union and falls within the definition within s.5 TULRCA, as it is not in the domination or control of the employer or a group of employers.

### Did the claimant perform trade union activities?



45. The role of a branch representative is to be a first point of contact for members and involves the day to day running of union matters. The Tribunal saw no evidence of the claimant having meetings with Mr Kearns, the area secretary. Nor did we see any evidence of the claimant taking time off work to perform union duties. However, we accepted the claimant's evidence that he was the appointed branch representative and that he undertook duties to advise and assist members, or to pass on their problems to Mr Kearns, where appropriate.
46. The claimant asserted that he had been involved in four specific cases;
  - 46.1 The claimant said he assisted Mr Powell by giving advice and passing him over to Mr Kearns. The Tribunal accepts that this occurred, although Mr Hearn was not aware that the claimant had direct involvement. The Tribunal had no reason to doubt the claimant's involvement in this matter,
  - 46.2 In respect of Mr Lloyd, the Tribunal was satisfied that the claimant had been involved in his issue and had put Mr Lloyd in touch with Mr Kearns and/or Ms Bell, to assist him with the problem he faced,
  - 46.3 The Tribunal were satisfied that the claimant assisted Mr Hoare with an issue which arose about him 'acting up' and that he gave Mr Hoare advice and support,
  - 46.4 The Tribunal accepted that the claimant had helped Mr Howard, as Mr Howard said in an email dated 3 November 2019 that he had the support of the claimant as his 'station union rep', whilst he faced a problem at work.
47. The respondent submitted that the claimant did not carry out union activity, but passed it on to the area representative or paid officials. The Tribunal did not accept this and preferred the claimant's evidence that he was the first line of advice for any member. If it was not something he could deal with, he would notify the area representative. Likewise, the Tribunal did not accept that just because the claimant did not claim for time off for union activity did not mean that the claimant did not perform such duties or attend meetings. The claimant said he did not have to make such a claim as meetings took place either when he was not on duty, or were informal matters dealt with at work.
48. The Tribunal were told and accept that at the relevant time the claimant was the only FBU representative at West Hampstead. When he was transferred to Stanmore he remained the FBU representative for West Hampstead as well as taking on the role for Stanmore. Objectively, the Tribunal were satisfied that the evidence showed the claimant to be involved in trade union activity.

Did Mr Tuhill and Mr Hearn have knowledge of the trade union activity?

49. In considering the issue of whether Mr Tuhill and Mr Hearn had knowledge of the claimant's participation in these cases; the Tribunal noted that it had not heard from Mr Kearns and therefore had no evidence to support the

contention that Mr Kearns indicated to managers that the claimant was involved in any of these cases. The Tribunal were satisfied that on a balance of probabilities, Mr Tuhill was aware that the claimant was an FBU representative, although he did not have direct contact with him in that capacity. There are a number of managerial levels between the claimant and Mr Tuhill and therefore someone of an appropriate level in the FBU would deal with Mr Tuhill directly.

50. At the relevant time, the claimant had been the representative for approximately two years. Mr Tuhill was responsible for three fire stations, including West Hampstead. There had been an increasing number of incidents and complaints at West Hampstead since Mr Williams had become station manager. Mr Tuhill was aware of all the incidents referred to, in which the claimant says he was involved.
51. It is therefore likely on a balance of probabilities, that Mr Tuhill was aware that the claimant was a representative of the members of FBU. Mr Tuhill admitted in cross examination that he was aware from the claimant's twitter account that he was more than just a member of the FBU.
52. The Tribunal were satisfied that the claimant had helped Mr Lloyd, Mr Hoare and Mr Powell, in his capacity as a trade union representative.
53. However, the claimant could not prove that Mr Tuhill or Mr Hearn were aware of the claimant's involvement in all these matters. Indeed the claimant accepted in his evidence that neither of them would have been aware of his involvement with Mr Howard.
54. The Tribunal accepted Mr Tuhill's evidence that he was not aware of the claimant's assistance or advice to Mr Lloyd, or Mr Howard. It saw no evidence to contradict this account. However, the Tribunal considered that in relation to Mr Powell, Mr Tuhill had admitted that he had spoken to Mr Hearn about this issue and that Mr Hearn had told him the source of the complaint. Whilst he did not recall that this was specific reference to the claimant, the Tribunal were satisfied that given his knowledge of the claimant as the only representative at West Hampstead, this gave him sufficient information as to piece together the claimant's identity as the relevant source. Further, Mr Hearn knew about his involvement and therefore was aware of his position as a trade union representative in relation to this matter. The Tribunal were therefore satisfied that subjectively, Mr Tuhill was aware of the claimant's trade union activity at the relevant time.
55. In respect of Mr Hoare, Mr Tuhill admitted that the claimant and Mr Hoare were colleagues and that there was a dispute between Mr Hoare and Mr Williams. Together with the email evidence from Mr Hoare in November 2019, the Tribunal were satisfied that Mr Tuhill was aware of the claimant's involvement in this matter. Furthermore, the Tribunal accepted the claimant's evidence that Mr Tuhill considered that the claimant was a representative who brought many matters forward and was 'troublesome'. The Tribunal considered that Mr Hearn was also aware of the claimant's status and shared the view.

Was the sole or main purpose to penalise the claimant for trade union activity?

56. The respondent did not refer the claimant or the Tribunal to any part of the Transfer Policy as having been applied to the claimant's move. The Tribunal were satisfied that the policy had not been followed, when deciding the claimant's transfer.
57. The Tribunal considered what was in the mind of Mr Tuhill and Mr Hearn when they made their decisions. We were satisfied that Mr Tuhill decided to move the claimant after he saw an email the claimant had sent to Mr George. He also knew that the claimant had been disciplined for the events at the car wash.
58. The reasons set out by Mr Tuhill in his letter to the claimant were considered by the Tribunal in light of our decision as to his knowledge; Firstly the breakdown in relationship with local managers and in particular the 'challenge' to the Watch Manager (Mr Barnett). The Tribunal noted that the claimant's evidence was that the meeting between them was not heated. There was no evidence from Mr Barnett about the meeting and no evidence to support the suggestion that he complained about it afterwards to a more senior officer, or to Human Resources. The evidence before the Tribunal was that Mr Barnett had told others that there must be another reason for the transfer. Mr Tuhill did not investigate this at all.
59. Mr Tuhill's evidence made reference to other instances of bad behaviour by the claimant which were reported to him by Mr Barnett but does not specify whether these occurred before or after the disciplinary matter. His evidence indicated that he felt the claimant had a lack of respect for his managers. The Tribunal considered that Mr Tuhill was aware that any serious breach of discipline would require investigation and the application of a process and Mr Tuhill did not do so. His evidence that he had spoken to Mr Williams who also said that the claimant had confronted him, was not accepted by the Tribunal. The Tribunal also noted that Mr Tuhill said he spoke to Mr Hearn on a number of occasions about the claimant, prior to any appeal process.
60. The fact that Mr Tuhill did not meet with the claimant prior to his decision to transfer him also troubled the Tribunal, as failure to do so shows Mr Tuhill was not willing to listen to the claimant. Given that the contractual right to relocate must be exercised reasonably, the Tribunal concluded that Mr Tuhill's actions were not reasonable and for all these reasons they concluded that Mr Tuhill did not genuinely consider there to be a breakdown in relationship with management.
61. The Tribunal considered the second reason set out by Mr Tuhill, that of the risk of repetition of inappropriate behaviour to the public. This matter had been dealt with by a disciplinary process and the claimant had received a penalty. Mr Tuhill's decision to transfer the claimant based on this incident, which had occurred 5 months previously, with no evidence of repetition, was, we find, an attempt to increase the penalty already applied. Ultimately, as a result of the claimant's grievance, this point was not relied upon. It therefore could not be a genuine reason for the decision to transfer.

62. The Tribunal therefore considered all the other circumstances to see whether there were any other reasons for the transfer which might be the principle reason for the decision. The Tribunal were not shown any other reasons by the respondent.
63. The claimant asserted it was due to his trade union activity and the Tribunal has found that Mr Tuhill was aware that the claimant had been involved in Mr Powell and Mr Hoare's complaints. The Tribunal considered that Mr Tuhill was aware that Mr Williams view was that the claimant was hard to manage. By removing the claimant, Mr Tuhill was reducing a problem for Mr Williams, whom he said he wanted to support. Mr Tuhill was also aware that the claimant was able to advise and assist others to bring complaints, which would also challenge Mr Williams.
64. The Tribunal concluded that as a result of his conversations with Mr Barnett, Mr Tuhill was looking to try to move the claimant out of West Hampstead. When the email arrived from Mr George, Mr Tuhill saw it as an opportunity to act, as the claimant was still agitating over the disciplinary outcome. Therefore, whilst not the sole reason, a principle reason for the transfer was the trade union activity of the claimant.
65. During the claimant's grievance he made reference to the fact that he felt that the reason for the transfer was related to his trade union activity. The grievance against his transfer was not upheld by Mr Thompson who wrote to Mr Williams to ask for supporting evidence and spoke to Mr Barnett after the grievance meeting but did not give the claimant any opportunity to respond to what was said by Mr Barnett or Mr Williams. The outcome of the grievance upheld the fact that to impose a second or pre-emptory sanction would not be appropriate. However, the outcome did not address the reason put forward by the claimant for his transfer.
66. The appeal of the grievance was made to Mr Hearn, who had been in close contact with Mr Tuhill who made the original decision. Mr Hearn should have removed himself from this process, on the basis that he was not independent of it. He was aware of the claimant's trade union activity and was aware that Mr Williams found the claimant difficult to manage, due to his raising issues himself and on behalf of others.
67. The Tribunal therefore conclude that the principal reason for the claimant's transfer was the fact that he had been involved in two complaints by member of the FBU and that Mr Tuhill was attempting to assist Mr Williams, who had to deal with multiple issues at West Hampstead which were being highlighted by the claimant.

Did the claimant make a qualifying disclosure on 29 October 2019?

68. The Tribunal considered carefully the notes of the hearing, as well as the claimant and Mr Hearn's evidence. The claimant asserted at this meeting that the real reason for his transfer was his trade union activity and that Mr Thompson had not addressed this. The Tribunal accept that the claimant said that Mr Williams had created a toxic atmosphere, but the Tribunal did not find that there was evidence to support the claimant reporting bullying or

overzealous disciplining.

69. The information provided by the claimant with reference to the other members who had been 'unfairly moved', was in response to a direct question from Mr Hearn. In response to each of the named people, Mr Hearn advised that they were not moved directly by Mr Williams.
70. The Tribunal concluded that the context of the conversation was within the claimant's complaint about the way in which he had been treated. He was not raising the treatment of others to show that any breach of a legal obligation, breach of duty towards the safety of firefighters, or unlawful act had occurred. Nor did he refer to it as such. The Tribunal consider that the conversation did not include details of the allegation the claimant alleges he was making.
71. For the sake of completeness the Tribunal are also satisfied that any reference to the treatment of others, was made to emphasise the points raised in relation to his own situation. We do not conclude that the claimant was attempting to act in the public interest at the time he made his comments, but to allude to others whom he was saying he had helped and therefore incurred the disapproval of Mr Williams.
72. The Tribunal therefore do not consider that this amounted to a qualifying disclosure, as it did not provide information and was not stated with reference to an act within s.47B(1)(a)- (f) and hence do not find that any detriment was related to a qualifying disclosure.

### Remedy

73. The Tribunal went on to consider remedy for the s. 146 TULRCA claim. As the claimant remains in the employment of the respondent, the only relevant head of loss is that of injury to feelings.
74. The Tribunal took into account that the claimant had time off work due to stress between September and December 2019, and that the transfer notification impacted negatively on the claimant's holiday, as he spent much of his time trying to address this issue. We understand that the claimant was upset by having to move away from close working relationships and trust which had been built over a long period of time and we note that the claimant saw the counselling and welfare service on four occasions as a result of these incidents. We also noted that there was evidence that the claimant had been bad-mouthed to new colleagues so that his reception at Stanmore was not as he would have liked.
75. The evidence also showed us that the claimant had now returned to West Hampstead (in March 2022) and that he continued to be the trade union representative for West Hampstead, even in his absence.
76. We note that compensation for injury to feelings is not a punitive award for the respondent. We took into account that this was a single event and it did not result in the claimant's dismissal. His time off work was relatively short and that he has now returned to his previous place. We also noted the claimant's generally robust character, much of which was intertwined in the

issues and evidence we heard.

77. The Tribunal considered the bands of Vento guidelines, as amended by Da'Bell and De Souza and the 2017 Presidential Guidance to the Employment Tribunals. We also took into account the claimant's assertion that this is a matter in the middle band. We did not concur with that submission, but consider that the events warrant an award in the lower band and award £6,000 for injury to feelings.
78. The Tribunal calculated the award of interest on that amount to be £1252 to the date of hearing. A total award of £7,252 shall be made.

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Employment Judge Cowen

Date: 10 June 2022

Sent to the parties on:

13 June 2022

For the Tribunal Office