



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Fairhall

**Respondent:** North Tees and Hartlepool NHS Foundation Trust

**HELD at Teesside Justice Hearing Centre**

**ON: 30 and 31 May 2022**

**BEFORE:** Employment Judge Johnson

**Members:** Mr S Wykes  
Mr P Curtis

## REPRESENTATION:

**Claimant:** Mr M Rudd of Counsel

**Respondent:** Mr D Bayne of Counsel

# JUDGMENT

## FURTHER REASONS AS REQUIRED BY ORDER OF THE EMPLOYMENT APPEAL TRIBUNAL

1. By its Judgment promulgated on 8 January 2020, the Employment Tribunal upheld the claimant's complaints of automatic unfair dismissal for making protected disclosures, ordinary unfair dismissal, being subjected to detriment for making protected disclosures and for breach of contract (being dismissed without notice).
2. By Notice of Appeal dated 14 February 2020, the respondent appealed against the finding that the claimant had been automatically unfairly dismissed for making protected disclosures and that the claimant had been subjected to detriments for making those protected disclosures. In its Judgment dated 1 July 2021, the Employment Appeal Tribunal dismissed the appeal against the protected disclosure dismissal determination, but ordered that the appeal against the protected disclosure detriments determination be referred back to the Employment Tribunal for re-hearing, so that it could provide more adequate reasons for its determination that a material factor in the imposition of the detriments on the claimant, was the protected disclosures.

3. At a preliminary hearing on 27 July 2021, counsel for both the claimant and the respondent agreed that the issue referred back to the Employment Tribunal by the Employment Appeal Tribunal could fairly be disposed of without any further evidence being heard from either side, but that counsel would make oral submissions to the Tribunal in respect of those detriment claims.
4. Mr Rudd and Mr Bayne this morning confirmed that there was no challenge by the respondent to the Employment Tribunal's earlier finding that the claimant had made protected disclosures, or any challenge to the Tribunal's finding that the claimant had been subjected to the following detriments:-
  - (i) The suspension.
  - (ii) The length of the suspension.
  - (iii) The delay in investigating process.
  - (iv) The manner in which the investigation was conducted.
  - (v) The failure to provide the claimant with specific details of any allegations.
  - (vi) The unreasonable manner in which the grievance (and appeal) were conducted.
  - (vii) The unreasonable manner in which the disciplinary hearing (and appeal) were conducted.

Mr Rudd and Mr Bayne agreed that (vii) above was so inextricably linked with the dismissal itself, that it should not be dealt with as a separate detriment.

Accordingly, the purpose of this hearing was to enable the Tribunal to provide more detailed reasons as to why the imposition of each of those six detriments upon the claimant had been materially influenced by her making protected disclosures. It was agreed that the Tribunal should deal with each detriment separately.

(i) The suspension

At paragraphs 13-25 in its Judgment, the Employment Tribunal set out details of 13 separate qualifying and protected disclosures which had been made by the claimant. Between 5 September 2016 and 21 October 2016, 7 protected disclosures were made by the claimant, of which 4 were made to Mr Steve Pett, the respondent's general manager for specialist services and partnership. It was Mr Pett who informed the claimant by a letter dated 31 October 2016 that she was being suspended, "to allow an investigation to take place following allegations of potential gross misconduct relating to concerns regarding your leadership and also concerns in relation to inappropriate and unprofessional behaviour including bullying and harassment."

At paragraph 117 of its Judgment, the Tribunal found that the respondent's suspension of the claimant was unjustified and unreasonable in all the circumstances of the case. The Tribunal found that, at the time of the suspension, there had been no allegations of potential gross misconduct which could justify suspension. Although the letter of suspension was signed by Mr Pett, evidence given to the Tribunal by Julie Parks was that she believed the decision to suspend the claimant had been taken by Julie Laine. However, neither Mr Pett nor Miss Laine were called to give evidence to the Tribunal to explain why it was considered necessary to

suspend the claimant in those circumstances. The Tribunal found that Mr Pett was aware that the claimant had made protected disclosures and found it more likely than not that Miss Laine was similarly aware. Due to the close proximity of the disclosures to the suspension and in the absence of any explanation whatsoever as to why the claimant had been suspended, the Tribunal found it more likely than not that the decision to suspend the claimant had been materially influenced by the making of the protected disclosures.

(ii) The length of the suspension

At paragraph 118 of its Judgment, the Employment Tribunal recorded that no meaningful or adequate explanation was given to the Tribunal by the respondent as to why the claimant's suspension lasted from 31 October 2016 until she was dismissed on 17 April 2018. That was found by the Tribunal to be an "inordinate and unreasonable length of time for an employee of the claimant's seniority and length of service to be suspended. During that time the claimant was never provided with any specific details of the allegations against her, despite raising a formal grievance, which included the need for and the length of her suspension." During the suspension, the claimant was refused access to the respondent's premises and was refused contact with any of her colleagues. The Tribunal found that the respondent throughout this period was intent on carrying out an investigation in a manner which was calculated to establish facts which could support allegations for which the claimant could ultimately be disciplined and dismissed. The Tribunal found it to be entirely unreasonable for the claimant to be suspended for that length of time whilst the respondent sought, unsuccessfully, to uncover anything for which the claimant could have been disciplined. The length of the delay was caused by the respondent's determination to uncover any such evidence, because she had made protected disclosures. The Tribunal found, in the absence of any explanation from the respondent's witnesses as to why the investigation took so long, that it was more likely than not that the length of suspension was materially influenced by the making of the protected disclosures.

(iii) The delay in the investigation process

There was an inordinate delay in the investigation process. The delay in the investigation process mirrors the delay in the length of the suspension. The Tribunal was satisfied that the reasons were the same. At paragraph 78 of its Judgment, the Tribunal notes that the respondent had prepared an investigation report by April 2017, but that it had not been sent to the claimant until October 2017. Once again, there was no explanation from the respondent as to why that report had been withheld from the claimant for that length of time. Attempts were made by the respondent to obtain statements from members of staff which were based upon "closed" questions, which the Tribunal was satisfied were designed to elicit responses from those members of staff which were critical of the claimant and which could be used to form the basis of disciplinary charges against her, because she had made protected disclosures. When little, if anything, of any substance could be uncovered, the respondent attempted to look elsewhere for such evidence and that inevitably extended the time taken to conduct the investigation. The Tribunal was satisfied that the protected

disclosures had a material influence on the manner in which the investigation was conducted and that unreasonably extended the length of time during which the investigation was carried out.

(iv) The manner in which the investigation was conducted

The purpose of the investigation and the manner in which it was conducted, are referred to in the preceding of this Judgment. The Tribunal also refers to paragraph 119 of its original Judgment, in which it found the investigation into the claimant's behaviour to have been "inadequate and unreasonable in all the circumstances of the case." No explanation was given for the unreasonable delay in interviewing the relevant witnesses, particularly those who are said to have expressed concerns about the claimant's behaviour. No explanation was given as to what was to be the remit of the investigation or of any instructions given to the investigating officer. No explanation was given as to why the investigating officer was not called to give evidence to the Tribunal. No explanation was given as to why the claimant was never informed about the nature of the allegations against her, nor why she was not sent a copy of the investigation report for some 6 months. The Tribunal found it more likely than not that the claimant's protected disclosures had a material influence on the unreasonable and unfair manner in which the investigation was carried out.

(v) The failure to provide the claimant with specific details of any allegations

At paragraph 119 of its Judgment the Tribunal records, "The allegations of misconduct for which the respondent says it dismissed the claimant were never specifically put to the claimant, so that she was never given a fair opportunity to prepare her case or to respond to them. The respondent's witnesses referred to little more than "themes" or "perceptions" by the staff, none of which contained the level of detail which would have enabled the claimant to respond. That failure by the respondent to provide the claimant with specific details of the allegations against her was a clear and obvious breach of the rules of natural justice and a clear and obvious breach of the ACAS Code of Practice. The Tribunal was satisfied that the respondent failed to provide the claimant with details of any allegations as the respondent had been unable to produce any evidence which could support any allegations of misconduct. The Tribunal was satisfied that the respondent was aware that this would put the claimant at a disadvantage and did so because of its determination to secure the dismissal of the claimant and that the respondent's course of conduct was materially influenced by the making of a protected disclosure.

(vi) The unreasonable manner in which the grievance (and appeal) were conducted

At paragraphs 65-72 of its original Judgment, the Tribunal sets out findings with regard to the grievance raised by the claimant on 7 May 2017. The grievance was investigated by Miss Dean and the claimant's appeal against the dismissal of her grievance was heard by Miss Taylor. The Tribunal found both Miss Dean and Miss Taylor to be unreliable and unpersuasive witnesses. In particular, the Tribunal found that Miss Taylor in conducting the appeal, had displayed an inappropriate element of pre-judgment. Miss Dean accepted under cross-examination (paragraph 68 of the original Judgment) that she had not made any specific findings in respect of a

number of the claimant's complaints and that a number of those allegations should have been upheld. Miss Dean and Miss Taylor both accepted that they were aware that the claimant had raised a grievance, although both maintained that they were not aware that the claimant had made protected disclosures. The Tribunal rejected their evidence in that regard. The Tribunal was satisfied that it was more likely than not that those protected disclosures had a material influence in the unreasonable manner in which the claimant's grievance and appeal against that outcome were conducted.

5. Having dealt with those detriments separately, the Tribunal records that it was satisfied that as soon as they became aware of the claimant's protected disclosures and her declared intention to instigate the formal whistle blowing policy, those senior members of the respondent's staff who became involved, embarked upon a course of conduct throughout the period of the suspension and the disciplinary process which was designed to secure the removal of the claimant from her post as clinical co-ordinator. In its determination to do so, the respondent imposed upon the claimant the detriments which are separately set out above. The Tribunal was satisfied that the imposition of each of those detriments was materially influenced by the making of the protected disclosures.

Employment Judge Johnson  
Date 5 July 2022

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