EMPLOYMENT TRIBUNALS

Claimant		Respondent
Miss V Coakley	v	**CF Support Services**

Heard at: **Bury St Edmunds** **On:** **23 - 27 May 2022**
In Chambers 23 & 24 August 2022

Before: **Employment Judge Laidler**
Members: **Mr M Brewis**
Mrs S Laurence - Doig

Appearance:
For the Claimant: **In Person**
For the Respondent: **Mr R Golin, Counsel**

RESERVED JUDGMENT

1. The following matters relied upon by the claimant amounted to protected disclosures within the meaning of section 43B Employment Rights Act 1996:

   1.1 25 November 2020 – the claimant telling Joanne Henderson that it was illegal and unsafe that the young person (YP) had been placed into an unregistered care home run by the respondent

   1.2 3 December 2020 – the claimant telling Joanne Henderson that Christopher Borg had not been restraint trained and should not have been assigned this shift as it is illegal.

   1.3 On or about 28 December 2020 the claimant telling Joanne Henderson that TC was breaching health and safety and crossing professional boundaries.

   1.4 On or about 14 January 2021 telling Joanne Henderson there was or would be a breach of regulations concerning KR's hours.

REASONS

1. The ET1 in this matter was received on 8 February 2021 following a period of ACAS Early Conciliation between 1 – 8 February 2021. The claimant who had not accrued 2 years' service brings claims of automatically unfair dismissal and detriment for having brought protected disclosures. The claims are defended by the respondent.

2. In the statement attached to her ET1 the claimant did state that she had raised concerns and then been victimised by Joanne Henderson for doing so. The respondent had sufficient information to be able to respond to the claim but requested further information. This was provided by the claimant on 18 June 2021. It is understandable that as a litigant in person the claimant's fitst attend did not necessarily cover all the aspects that the tribunal and the respondent required. This was rectified after E J Michell explained to the claimant at his preliminary hearing what was required and dealt with in the claimant's second further particulars.

3. This hearing was listed at a telephone Preliminary Hearing before Employment Judge Michell on 25 November 2021. The judge found that although Further and Better Particulars had been provided by the claimant they were long and "not sufficiently focussed or clear". The claimant was ordered to provide Further and Better Particulars of her claim by 23 December 2021. These were set out in a detailed table and have been summarised in the list of issues below. The tribunal accepts the claimant's explanation given at this Hearing that it was difficult for her as a litigant in person to understand what detail to put into her claim but that after this was explained in more detail by E J Michel she then did provide that detail. Directions were also made for the disclosure of all relevant documents, preparation of the bundle and the exchange of witness statements.

4. At the outset of this hearing the Tribunal dealt firstly with the claimant's application to strike out the response due to difficulties with regards the preparation of the bundle. Having heard all the arguments, the Tribunal rejected the application to strike out. The claimant had summarised in her written submissions for the application that the Tribunal must consider if it finds a breach of the Rules or Orders whether a fair trial is still possible. It clearly was. The bundle was present as were the witness statements and all parties were ready to proceed. If the claimant still maintained as she set out in her written submissions that some documents, for example email trails were missing, she could allude to that in cross-examination.

5. It was also the Tribunal's experience that a lot of these documents would not be relevant to the issues it has to determine. The respondent was trying to point that out to the claimant. Whilst accepting the claimant is a litigant in person it is still necessary for the documents to be relevant to the issues. It was not appropriate to strike out the response and the hearing proceeded.

6. The respondent also sought leave to serve a second witness statement on behalf of Joanne Henderson. It also wished to rely upon:-

   An extract from the Guide to Children's Homes Regulations including the quality standards April 2015.

   The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021.

An extract (1 ½ pages) from the House of Commons Library, Looked after Children: out of area, unregulated and unregistered accommodation (England), a research briefing published 12 November 2021.

7. The Tribunal's initial position was that this missed a key element of whistleblowing law in that the claimant does not have to establish she was correct in her assertions that she relies upon as protected disclosures. A claimant can be wrong but if all the constituent parts a s43B of the Employment Rights Act (ERA) are satisfied the Tribunal can still find there was a protected and qualifying disclosure. The key issue then is one of causation, were the detriments that the claimant says she suffered the reason for her resignation and because she had made protected disclosures. The Tribunal's initial view was that it would not be assisted by the above documents or Joanne Henderson's second statement.

8. Counsel then handed up the case of **Eiger Securities Llp v Korshunova UKEAT/149/16**. The Tribunal indicated it would read that decision and carry out its reading for the remainder of Day 1 and then revisit the position of the second witness statement and the documents and hear detailed arguments on the second day.

9. Having heard those detailed arguments the Tribunal agreed to allow in the second witness statement of Ms Henderson and the documents relied upon as they may help inform the Tribunal as to the legal obligation the claimant seeks to argue was, or likely to be, breached. That did not mean that the Tribunal accepted the legal reasoning put forward by the respondent's representative or the relevance of the case of **Eiger** relied upon. The Tribunal wished to emphasise that it would not be making findings, nor would they be required to do so on whether the claimant's understanding of relevant Regulations was correct. The Tribunal did, however, accept the submission made on behalf of the respondent that statute requires the Tribunal to determine whether the claimant had a reasonable belief. That is why the witness statement and documents were allowed in, but any questions in cross-examination had to be limited to the reasonableness of the claimant's belief and not to whether her understanding was right or wrong.

The Issues

10. The respondent provided a list of issues which all agreed were the issues to be determined and these are now set out, as clarified at this hearing.

Automatic unfair dismissal (contrary to section 103A ERA 1996)

1. Was the claimant automatically unfairly dismissed for making one or more of the seven alleged protected disclosures contrary to section 103A of the Employment Rights Act 1996 ('ERA 1996') as alleged in the claimant's Further and Better Particulars (as sent to the respondent's solicitors on 14 December 2021) (the 'Further and Better Particulars')?
2. What are the alleged disclosures made by the claimant?

Did the claimant disclose information as listed in the Further and Better Particulars? (the claimant was asked to clarify which paragraphs of her witness statement referred to which disclosure and the detail she gave at this hearing has been incorporated below)

Disclosure 1 (paragraph 29 claimant's witness statement)

25 November 2020 – the claimant telling Joanne Henderson that it was illegal and unsafe that the young person (YP) had been placed into an unregistered care home run by the respondent

Disclosure 2 (paragraph 31 witness statement)

3 December 2020 – the claimant telling Joanne Henderson that Christopher Borg had not been restraint trained and should not have been assigned this shift as it is illegal.

Disclosure 3 (not covered in claimant's witness statement)

24 December 2020 – claimant to Joanne Henderson that she felt unsafe carrying out unregulated placements and the practice she had witnessed from staff was not to the regulators standard and that what the claimant was being asked to do was illegal

Disclosure 4

Various phone calls throughout her employment to Joanne Henderson, Issy Dordery, Denise Holland, Michelle Scott and Charlotte Wright – constantly raising safeguarding concerns and the respondent's failures as regard its legal obligations and in particular:

a. That Kingsley Rumbold was breaching risk assessments and crossing professional boundaries by having personal contact with the YPs family and using his personal telephone number and providing the family with confidential information. (This it was established is referred to in paragraph 62 of claimant's witness statement although she accepted the tribunal might find this was background rather than a discreet disclosure. It was left for the tribunal to determine)
b. That Tamera Cottrell was breaching health and safety and crossing professional boundaries by sleeping in a YPs room. (paragraph 38 witness statement)
c. That the Respondent had failed to carry out proper risk assessments in line with its legal obligations to do so placing YPs and staff's health and safety at risk. (paragraph 56 witness statement and is the same as disclosure 7 below)
d. That Kingsley Rumbold could not do a 3 day 24 hour waking night as it was against health and safety and the law. (paragraph 60 witness statement)

e. On 11 January 2021 in a telephone call to Joanne Henderson the claimant stated that a lack of trained staff was placing the safety of YPs and workers at risk. (paragraph 46 witness statement)

Disclosure 5 (this the claimant accepted is the same as 4d) above)

13 January 2021 – in relation to Kingsley Rumbold having no shifts on the case the claimant was managing telling Joanne Henderson that it would not be appropriate for him to pick up overtime around shifts and that if he were to do a shift it would put him and the YP and anyone else on shift at risk and that it was not legal to work that many hours

Disclosure 6 (paragraph 67 claimant's witness statement)

17 January 2021 – in forwarding Joanne Henderson an email from Rebecca Fairweather complaining that Kingsley Rumbold had fallen asleep on shift and had several times cross professional boundaries placing staff at risk, the claimant raised the following:

a. That she had witnessed unprofessional processes with little to no communication and other staff not really knowing what they should be doing.
b. That she was disgraced by the lack of qualifications and skill amongst staff working with young people
c. The company was not only unprofessional but it was not complying with its legal obligations and exposing the staff to risk

Disclosure 7 (this is the same as 4c) above)

15 January 2021 – the claimant telling Joanne Henderson that the staff were not qualified to carry out risk assessments and that was unsafe and that she would not sign off on a risk assessment she had not undertaken.

3. In respect of each alleged disclosure (as listed in the Further and Better Particulars) the employment tribunal will need to decide:
   a. Whether the disclosure was in fact made and on what date;
   b. Whether it amounted to the disclosure of information falling within the scope of section 43B (i.e. as opposed to the disclosure of mere allegation or opinions);
   c. Whether the disclosure qualifies for protection under section 43B ERA, as a qualifying disclosure, because it explicitly or implicitly tended to show an identified one or more of the matters listed in section 43B sub-paragraphs (a) to (f) namely:
      a) that a criminal offence has been committed, is being committed or is likely to be committed

b) that a person has failed, is failing or was likely to fail to comply with any legal obligation to which he is subject,

c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

d) that the health or safety of any individual has been, is being or is likely to be endangered,

e) that the environment has been, is being or is likely to be damages, or

f) that information tending to show any matter falling within any one of the preceding paragraphs has been, was likely to be deliberately concealed

d. Whether the disclosure was made in circumstances where the claimant believed that the disclosure tended to show wrongdoing failing within the scope of section 43(1)(a) to (f)

e. Whether the claimant's belief was reasonable;

f. Whether it was made in circumstances where the claimant reasonably believed it was made in the public interest;

g. Whether any disclosure was made to a relevant person prescribed by an order of the Secretary of State under section 43F ERA; and if so;

i. Whether the claimant reasonably believed the failure fell within the description of matters in respect the person prescribed was responsible; and

ii. the information disclosed and any allegation was substantially true.

h. Whether each disclosure was made in circumstances where the claimant reasonably believed it was made in the public interest.

Automatic Unfair Dismissal section 103A ERA

4. If the claimant establishes that she made one or more protected disclosures (as determined by the Employment Tribunal at steps 2 and 3 above) the tribunal will need to consider if the claimant's resignation was in law a construction automatically unfair dismissal on the basis that the reasonable or principal reason for her dismissal was that she made any protected disclosure.

Detriment Claim

5. In the event the Employment Tribunal finds that the claimant made one or more protected disclosures (as listed in the Further and Better Particulars) it must consider if the claimant was subjected to any detriment as set out

in the Further and Better Particulars) by any act, or any deliberate failure to act, by the respondent done on the ground that the claimant made a protected disclosure (see section 47B ERA).

6. In respect of each alleged detriment (as set out in the Further and Better Particulars), the Employment Tribunal will need to consider:
   a. Whether the claimant was subject to the treatment complained of;
   b. Whether the treatment was capable of amounting to a detriment (i.e. was the claimant disadvantaged);
   c. Whether the claimant was subjected to the detriment on the ground that she had made any protected disclosure (as determined by the tribunal at steps 2 and 3 above).
7. In relation to any detriment, did the claimant present her claim to the Employment Tribunal "*before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them"* (see section 48(3)(a) ERA).

Section 1 statement compensation claim

8. Has the claimant brought at successful substantive claim (as listed in Schedule 5 of the Employment Act 2002) (i.e. detriment and unfair dismissal)?
9. If so, is the claimant entitled to any compensation of a minimum of two weeks' pay or a higher amount capped at four weeks' pay on the basis the Employment Tribunal considers it is just and equitable in all the circumstances?

Remedies

10. In the event the claimant succeeds with his claim for unfair dismissal, as to remedies, the employment tribunal will need to consider (as appropriate):
    a. What is the value of the Basic Award?
    b. What is the value of the compensation award, giving credit for sums earned in mitigation?
    c. Should any reduction apply in relation to the chance that the claimant would have been dismissed in any event (under *Polkey v AE Dayton Services)?*
    d. Should any increase (or reduction) be applied for a failure to follow the Acas code by the respondent or the claimant?
    e. Should a reduction be applied for contributory fault by the claimant?

11. The claimant gave evidence on her own account as did Charlotte Wright and Hannah Kossowska - Peck former employees of the respondent. Although the claimant had obtained a witness statement of Rebecca Fairweather but she was not able to attend so her evidence has not been taken into account by the Tribunal.

12. For the respondent Joanne Henderson, Director, gave evidence. The Tribunal had a bundle of documents running to 407 pages with some additional documents added. This hearing had been listed for 5 days and the tribunal was able to hear the evidence and submissions within that allocation. It started its discussion on the final day but there was insufficient time to complete it. The first date that all members of the tribunal could meet again was the 23 and 24 August 2022 hence the delay in forwarding these reasons to the parties.

13. From the evidence heard the Tribunal finds the following facts.

The facts

14. The claimant was employed from 14 October 2020 to 24 January 2021.

15. The respondent is a social care company providing families support services and residential care for children with complex and challenging needs. The company started in business in 2009 and was purchased by Ms Henderson in 2017. She does not have a background in social care coming from an HR background.

16. The respondent is based in Ipswich, Suffolk but operates throughout the East of England. It employs approximately 50 employees. Of those, 5 work at the Head Office in Ipswich providing administrative and support services. The remainder are managers and support workers providing direct child support either in residential children's homes or the community. It operates 3 Ofsted registered children's homes.

The recruitment of the claimant

17. There is no dispute that staff of the respondent had worked with the claimant and recommended her to Ms Henderson. It was suggested the claimant contact her about a role with the respondent.

18. The claimant had a telephone chat with Charlotte Wright employed at that time as the Operations Manager on 28 July 2020. That is confirmed in an email of that date. The Tribunal is satisfied that was not a formal interview as Ms Henderson had suggested had occurred on 31 July. This was confirmed by Charlotte Wright, who the Tribunal heard from, and Ms Henderson eventually acknowledged in cross-examination it was only a chat.

19. The email of 28 July 2020 confirmed that the claimant was invited to interview on 5 August 2020. She was asked to complete and return an application form and bring other documents with her. From an email seen of 7 August 2020 the Tribunal accepts that the application form the claimant took to the interview did

not have her job history on it and she was asked after the interview to complete another form showing her job history.

20. The Tribunal saw her CV at page 130 of the bundle and her completed job application. These both show that the claimant's last role was Senior Youth Support Practitioner with her career in social care starting in or about 2017. She did not have experience as a Children's Care Home Manager.

21. At paragraph 17 of the amended ET3 the respondent had stated *"the claimant was employed because the respondent understood from her job application that she was an experienced and qualified Care Home Manager"*. Ms Henderson accepted in evidence, that paragraph was incorrect. She felt however, that the claimant had demonstrated the requisite qualities required at interview. Ms Henderson further accepted in cross-examination there were interview notes of that meeting but these have never been disclosed.

22. An offer letter was sent to the claimant by Ms Henderson on 10 August 2020 (page 133). This provided that the claimant was being offered the position of Registered Manager of *"our potential new home near Saxmundham. We are awaiting planning to be changed to C2 usage so as the Home opening is subject to this I would suggest you do not hand your notice in until this has been granted. We can agree your start date once this has been given, alternately, if it seems that it may take a while we can review in a few weeks".*

23. The letter set out that the claimant would be employed on a full time basis for 40 hours a week which would be worked flexibly and would include overnight and weekend work.

24. The claimant's salary was to be £30,000 per annum inclusive of an on call provision which would be paid monthly in arrears direct into the claimant's bank account. Any additional hours would be payable at £10 per hour and that applied to overtime or on call hours.

25. The claimant would be entitled to 20 days holiday plus bank holidays per year. She would be automatically enrolled into the company pension scheme and deductions made in accordance with UK pension legislation.

26. The claimant would be subject to an initial probationary period of 3 months. Her performance would then be assessed and the company reserved the right at any time during that period to terminate the employment with one weeks written notice.

27. The offer was made subject to satisfactory references and confirmation of the claimant's DBS on the update service. It was agreed they would not seek references from the claimant's current employer until they had agreed a start date and the claimant had handed in her notice.

28. Despite that assurance someone at the respondent did seek references prior to the claimant giving in her notice. From these it can be seen quite clearly that the claimant had not had supervisory responsibilities.

29. Joanne Henderson stated in her witness statement that the claimant was managed by Charlotte Wright, the new Operations Manager and blamed her for the failure to issue the claimant with a contract of employment or deal with induction and training in a satisfactory manner. Having heard evidence from Charlotte Wright the tribunal is satisfied that she had not worked in the health and social care sector before and did not receive the relevant training to enable

her to fulfil her role and provide the appropriate contract or induction training to the claimant.

30. In an email of the 12 October 2020 recruitment at the respondent stated to the claimant that Joanne would be sending the claimant's contract 'soon'. In cross examination however she eventually accepted that she did not think Charlotte had ever written a contract before and that it was her fault for not having written the contract and sent it to the claimant. She relied upon the lockdowns and shortage of staff as an excuse

31. For reasons which neither Joanne Henderson nor the tribunal understood the respondent sent the claimant a contract in March 2021 after she had left employment. The only explanation was this was on the advice of solicitors.

32. Much was heard in the evidence about the position concerning the purchase of Cherry Lodge. In the offer letter the Tribunal is satisfied it referred only to awaiting planning being changed.

33. In the ET1 and in the first set of further particulars the claimant refers to Cherry Lodge not having been purchased at the time she was recruited. Although she now says she did not know how to do the Further and Better Particulars and maintains that it was not until 4 November 2020 that she found out it had not been purchased the Tribunal can not accept that. Whilst accepting that the claimant might not have been clear as to how to set out the protected disclosures and related detriments flowing from them this aspect is not about those, but she has been clear in two documents that she knew that the property had not been purchased.

34. The Tribunal does however find that the claimant's focus at that time was when the property would be ready for her to start refurbishing it and what she was concerned about and the information she was provided with was about planning permission. Further, the claimant did not have experience of buying a Care Home and the conveyancing and planning aspects of that.

35. The Tribunal does find that at a team meeting on 4 November 2020 it was made clear by Joanne Henderson that the property had not even been purchased. Charlotte Wright confirmed that at paragraph 10 of her witness statement.

36. Despite the property not having yet being purchased the claimant started with the respondent on 14 October 2020 and she started working at a rented property.

BB

37. BB is a young person who at the time was 15 years old with very challenging behaviours. He had been a resident at a Children's Home owned by the respondent and notice had been served upon him due to matters that had occurred within the Home. He had been put into an emergency bed in Ipswich and in the respondent's care from 6 November 2020.

38. The Tribunal saw in the bundle, at page 338, a chronology of his time with the respondent prepared by Hannah Kossowska - Peck. BB had been passed over to the care of the respondent on 6 November 2020.

39. A meeting of various staff of the respondent, including the claimant, but also attended by BB's Social Worker took place on 17 November 2020 (page 345). This concerned how long BB could remain in the emergency location and where he could then be moved to. There was mention of another property in Lowestoft although the Tribunal heard, in evidence, that did not materialise.

40. On 25 November in an email to various members of staff, Hannah confirmed that BB was being moved to a new property near Needham Market which was a rented property. The claimant believed this was rented by the respondent but did not know the specifics. There was much debate in the cross examination of the claimant regarding this arrangement and it is not for this tribunal to resolve the nature of this placement and whether it complied with regulations or not.

Disclosure 1: 25 November 2020

41. The disclosure which the claimant now seeks to rely upon, as set out in her Further and Better Particulars received on 14 December 2021 is that she was *"appalled to learn that the young person was placed into an unregistered Care Home by the respondent."* She states that she said to Joanne Henderson *"it is illegal and unsafe that this YP was in this Care Home"* she alleges that she was subjected to shouting in front of the office staff and was made to feel humiliated and degraded and not provided with her contract of employment because of having made his disclosure.

42. The Tribunal does accept that a discussion took place in the office on 25 November. The respondent denied throughout that the claimant was there on that day stating she was working on a shift elsewhere. The claimant's mileage records were however produced and Joanne Henderson had to accept in cross-examination that they demonstrated the claimant had left the accommodation housing BB and travelled to the office for which she was paid mileage.

43. The Tribunal has had to consider the various documents prepared by the claimant to determine what was said on 25 November 2020 as her version conflicts with that of the respondent.

44. In the ET1 the claimant said at page 9 of the bundle that: -

"an incident occurred whilst on shift on this case and I informed Joanne Henderson about the processes that should be followed by updating Ofsted rules. This conversation had two witnesses (Charlie Wright and Hannah Kossowska - Peck) where it was explained to me that although unregistered cases are illegal, she was ensuring that her input on the case was as legal as possible and that I need not worry as it was not my responsibility anymore and that the YP was under another manager, not myself".

45. In the first set of Further Particulars provided in June 2021 in response to the respondent's request the claimant stated that she attended the office and spoke to Ms Henderson about sending a notification to Ofsted about a serious incident that happened with BB. She then went on: -

"JH stood up from her desk and raised her voice at VC stating that CFSS do not send notifications to Ofsted. VC responded to JH calmly asking why we were not following procedure and what VC should do instead."

46. The claimant went on to say that she and Charlotte Wright were instructed to go into another room with Ms Henderson at which point Ms Henderson "*explained that the case VC was working on was an illegal case and the Young Person was not under Ofsted's regulation at that point in time. JH explained that she was arranging with the Local Authority to have the Young Person placed under the umbrella of a Local Authority Children's Home to conform with Ofsted regulations. VC made clear she did not feel comfortable managing an illegal case. JH stated that if Ofsted turned up she was ensuring it appeared as a regulated placement. JH states that VC was to refer Ofsted to the LA. VC stated to JH that she was not comfortable lying to Ofsted. JH replied that it was just a little white lie'*

47. In the second Further and Better Particulars the claimant made it clear that she told Joanne Henderson that the arrangement was illegal and that she was then shouted at.

48. The claimant gave evidence that on arriving at the office that day she stood at Hannah's desk explaining that she needed to send a notification to Ofsted as BB was missing from care and that a serious incident had occurred with him breaking into another children's home. Joanne Henderson was the other side of the office and suddenly started shouting that 'we don't send notifications to Ofsted'. The claimant felt embarrassed and humiliated at how abrupt and angry Joanne Henderson had become towards her. Joanne then shouted that the YP was 'not registered with Ofsted in the care of the R'. The claimant was instructed by her to go into another room with Charlotte and Hannah.

49. The claimant's own witnesses Charlotte Wright and Hannah Kossowska – Peck were both present during this interaction. They both gave evidence which the tribunal accepts that the claimant arrived at the office and stated she needed to make a notification to Ofsted. Ms Henderson overheard the claimant talking to Hannah about this and became annoyed shouting across the office that the claimant was not to make the referral. Hannah, in her witness statement does say the claimant expressed concerns but not until they were in the back office.

50. When in the separate office the tribunal accepts that Ms Henderson explained that although unregistered cases are illegal she ensured that their input into the case was as legal as possible. The claimant replied, it is accepted that this was both 'illegal and unsafe'. Ms Henderson went on that although the case's status was illegal she was currently in talks with Suffolk County Council to hide the young person under one of their homes and if Ofsted were to inspect the claimant was to tell them to speak to the Head of Services. The claimant replied to this that that would be a lie to the regulatory authority to which Ms Henderson's reply was 'its just a white lie'. The claimant told Ms Henderson she was uncomfortable with this.

51. The claimant's evidence was supported by the other two people in the room that day. Hannah gave evidence which the tribunal accepts that Ms Henderson shouted across the room when she heard the claimant talking to Hannah about making a referral to Ofsted. She also stated she had seen this behaviour before and been targeted by Ms Henderson when she would be aggressive, swear and shout at members of staff. She confirmed that Ms Henderson

stated that they did not make a referral to Ofsted as the YP was not properly registered with the respondent. She recalled that the claimant expressed her clear concerns that this was unsafe and illegal and also was concerned about having management responsibility for this case should Ofsted make an unplanned visit. Ms Henderson explained that the claimant did not need to worry as she was in talks with the local authority to try and place the YP under the umbrella of another children's home. She told the claimant that if Ofsted attended she was to give the details of the local authority. When the claimant stated she was not comfortable lying to Ofsted she was told by Ms Henderson it was 'just a white lie'. Charlotte gave similar evidence.

52. The tribunal found the evidence given by and on behalf of the claimant the most credible. In coming to that conclusion, it has taken into account that Ms Henderson had continued to deny that the claimant was even in the office until confronted with the claimant's mileage record that demonstrated the respondent had paid her mileage claim for coming to the office that day. Her evidence had not been credible in other respects for example blaming Charlotte for the lack of a contract of employment for the claimant before accepting eventually that the drafting and issuing of one was her responsibility.

53. It follows that in relation to the 25 November 2020 disclosure the Tribunal ~~cannot~~ accepts that there was a disclosure made in the public interest that this placement was in the claimants reasonable belief both illegal and unsafe and that the respondent was or was likely to be committing a criminal offence, breaching a legal obligation or that the health and safety of any individual (the young person and/or staff) had been, was being or was likely to be endangered. It was a protected disclosure. The claimant was left feeling distressed at her treatment by Ms Henderson and worried and anxious about being contacted by Ofsted in relation to this matter and the safety of the YP.

Disclosure 2 – that on 3 December 2020 the claimant told Joanne Henderson that Christopher Borg had not been restraint trained and should not have been assigned the shift which was illegal.

54. The tribunal saw at p359 the respondent's 'Recruitment Process stage by stage'. This clearly set out at paragraph 23 that a new candidate 'MUST have completed Safeguarding, Challenging Behaviour, Medication Administration, First Aid courses and Step on De-escalation and Physical intervention training before they are allocated any work'.

55. Again Joanne Henderson denied the claimant was at the office on 3 December 2020 until confronted with a text message that showed that the claimant was 'on way' when she then conceded that it 'looks as if' she was in the office.

56. Whilst on shift that day the YP had a lighter which he was playing dangerously with but did stop eventually. This is set out in the particulars attached to the ET1. The incident did not become out of hand and the lighter was given to staff. On attending the office the claimant explained to Joanne Henderson and Hannah (heard by Charlotte) that the support worker Christopher Borg should not have been on shift due to not having had restraint training. Although the claimant had been trained this was by the local authority and was about to run out. Joanne Henderson again shouted across the office at the claimant in front

of others that she should have restrained the child and removed the lighter describing how police had restrained him previously and broken his arm and therefore the claimant could use reasonable force. This was confirmed by both Hannah and Charlotte.

57. In her witness statement Joanne Henderson firstly denied that the claimant had been in the office that day. In the alternative she stated that there was a comprehensive training programme in place but it was not a legal requirement to have physical intervention training. In cross examination she confirmed that in terms of best practice and the respondent's own policy it should have been done. She then seemed to also accept that there had been a conversation about the policy breaking the YPs arm and how careful they needed to be in using restraint.

58. The tribunal was taken to a text exchange which although undated both Charlotte and the claimant stated was later that day in which Charlotte expressed her concern at how Joanne had spoken to the claimant earlier. Ms Henderson stated in cross examination that did not confirm that she had shouted at the claimant but that 'I spoke to you in a way you were not happy with' and accepted that she must have 'spoken in a way that would upset someone'.

59. The tribunal is satisfied that the claimant was disclosing information to Ms Henderson that in her reasonable belief was in the public interest and showed that there was a breach of a legal obligation (the policy), regulations and that the health and safety of staff and YPs had been or was likely to be endangered. The claimant was treated detrimentally for raising this by being shouted at by Joanne Henderson.

Disclosure 3 – 24 December 2020 – that the claimant felt unsafe carrying out unregulated placements.

60. In her further and better particulars the claimant had stated that on 24 December 2020 Joanne Henderson phoned her for an update on a care case. After she had given an overview the claimant states she raised concerns that no staff had the required regulatory training and that she had also now worked 2 months and still did not have a contract. She alleges Joanne Henderson shouted at her and stated that with the Covid restrictions she was under pressure. The claimant asserts that she said it was unsafe carrying out unregulated placements and was illegal.

61. The claimant had to accept in cross examination that she had omitted this allegation from her witness statement. Her explanation was dyslexia and whilst the tribunal has sympathy that that may have made preparing the witness statement harder is not a reason for leaving out aspects of her case. All this disclosure was not set out in detail in the ET1 claim form all the claimant's detailed letter to Jonathan Smith of 1 February 2021.

62. Joanne Henderson accepts that she spoke with the claimant on the telephone on 24 December that disputes the contents of the telephone conversation.

63. The tribunal has to find that although there was a discussion on that day there was not a protected disclosure made.

Disclosure 4 – various phone calls throughout the claimant's employment.

64. In this section the tribunal identified that there were 5 discreet disclosures relied upon by the claimant and these were marked a) to e) in the further particulars. The claimant accepted that 4 a) may be better described as background and left it for the tribunal to determine.

Disclosure 4a) – that KR was breaching risk assessments and crossing professional boundaries.

65. In her witness statement at paragraph 62 the claimant had stated that in January 2021 she had several conversations with Joanne Henderson on the telephone about KR about complaints of other staff members that he was crossing professional boundaries when on shift with them which breached professional limits.

66. The tribunal was taken to an email exchange between the claimant and Joanne Henderson on 13 January 2021. This was specifically about KR. The claimant had a supervision coming up with him the following week and she was stating how it had been difficult to arrange "due to his choice to work rather than attend a supervision". She believed that KR had more of a desire to focus on a high level of hours the dedication to the role. He failed to see at times that delivering quality care to YP. She described him as being overconfident and complacent which can antagonise the YP. Stated at the end of the email that she had nothing against him but he needed to slow down and understand that he is not qualified to make some of the decisions he does and that he can potentially put himself at risk.

67. The tribunal found it hard to see where a disclosure had been made but accepts that this was relevant background about her concerns regarding KR.

Disclosure 4b) - that TC was breaching health and safety and crossing professional boundaries sleeping in a YPs room.

68. The claimant set out in her witness statement that on 22 December 2020 she arrived on shift to take over from TC and was told by her that she had allowed the young person to smoke a cigarette in her car as she felt sorry for her having to smoke out in the cold. TC had also informed the claimant that she had been working shifts on the other unregulated case and had slept in the same room as the young person and she had done the same on this case. TC also stated to the claimant that she felt it was okay to do this as she had written it in her shift report. The claimant explained to her how it was not okay and she would place herself at risk of allegations and the crossing of professional boundaries. Allowing a child to smoke in her car was breaching regulations and policy.

69. The tribunal accepts the claimant's evidence that she phoned Joanne Henderson and informed her what TC had told her. Joanne Henderson told her to take out such information from the reports. The claimant told her that this would be illegal to tamper with a report written by another staff member. Joanne

Henderson became angry and asked the claimant who was supervising TC. The claimant stated she did not know but would try and find out. The tribunal accepts that Joanne Henderson replied aggressively saying that the claimant should now and inform the supervisor.

70. The tribunal was taken to a text message exchange the claimant had with Michelle Scott asking who did TCs supervisions. She was told that it was Izzy. When asked why, the claimant explained that it was because TC "needs a gentle guidance that it's not okay to sleep in the same room as BB and KR [the young person] and it's not okay to allow KR to sit in her car smoking". This supports the claimant's contention that this matter had been raised with Joanne Henderson and that she then needed to clarify who was TC's supervisor.

71. The tribunal is satisfied that the claimant did raise this matter with Joanne Henderson and that in doing so she made a disclosure that a person had failed all was failing or likely to fail to comply with any legal obligation and/or that there have or safety of any likely to be endangered.

72. As a result of making this disclosure the claimant was again shouted out by Joanne Henderson. The tribunal accepts that this was a pattern of behaviour that when Joanne Henderson was challenged on matters by the claimant that was her response. The tribunal is supported in that contention by the evidence of Charlotte Wright and Hannah Kossowska – Peck who both gave evidence of Joanne Henderson shouting at staff and being aggressive towards them. Both of those people resigned and in the final paragraph of Charlotte's witness statement she explained how Joanne Henderson would often speak to her rudely and get cross when Charlotte did not know the answer to a question even though Joanne Henderson knew she did not have experience in this sector.

73. Charlotte resigned on the 18 December 2020 and before doing so set out in an email of the 14 December her concerns about her position. She particularly emphasised the lack of training she had received in what was a new sector for her and being asked to write job descriptions and prepare an induction programme when 'I do not know what they should and shouldn't be doing'. She also gave the example of having just returned to work after Covid and being asked about s self – isolation form and 'I was made to feel embarrassed in front of colleagues yet I had only returned to work this morning and was unaware of this form myself'. The tribunal finds there was a pattern of undermining staff and not providing adequate training.

Disclosure 4e) – 11 January 2020 telling Joanne Henderson that the lack of trained staff was placing the safety of YPs and staff at risk.

74. In the ET1 the claimant stated that she raised with Joanne Henderson in a telephone call on or about the 11 or 12 January 2020 that they were a lot of safeguarding issues and that she had concerns a serious incident would

eventually happen. Joanne Henderson started shouting at the claimant at which point the claimant firmly raised her voice pointing out how she believed she was being treated by Joanne Henderson and how she did not find it acceptable.

75. The claimant relied upon messages with Michelle Scott seen in the bundle at pages 365 - 368 in which Michelle explained to the claimant she had found a razor in a young person's pillowcase, and it was clear from the messages that she did not know how to do a room search and how that should be recorded.

76. The tribunal is satisfied that the claimant confronted Joanne Henderson about the way she was spoken to but it finds this was more of a confrontation and the claimant expressing her grievances at the role and general state of the respondent rather than a protected disclosure.

Disclosure 5 (this is the same as disclosure 4d)) KR's hours.

77. On 14 January 2021 the claimant was sent a message by Joanne Henderson. The tribunal saw the message in the bundle at page 332 and despite been provided with other versions it was difficult to read. It can however be seen that the claimant was explaining how many hours the carer KR had worked and why she could not allocate him more. She explained that he could not work the Wednesday as "that would lead him into another 24-hour working night. He cannot do the Monday as that too would lead him into another shift from a waking night". The claimant also stated that he was more focused on as many hours as possible and she would not put staff for young people at risk.

78. It is the claimant's evidence which the tribunal accepts that Joanne Henderson still put him on shift and gave him the hours he had requested despite the above conversation.

79. Joanne Henderson appeared to accept that they did have an exchange about hours. She stated in her witness statement that this was an issue for the claimant to deal with as part of her normal duties as a manager. In cross examination she did not deny that excessive hours could put a young person at risk and that during January KR probably did work excessive hours. When the claimant put it to her that that was what she was explaining in her messages Ms Henderson stated it could put a child at risk and is not ideal and "you have highlighted excessive hours" acknowledging that she had a duty of care to staff and the child.

80. An additional document introduced at this hearing was an OFSTED report following an inspection on 2 February 2021. This recorded that: –

> "One external agency staff member worked excessive hours at another children's home in the days leading up to a shift at the single placement provision. There is no system to monitor the staff hours. Staff working excessive hours without a break or sleep could place the child"

81. Joanne Henderson accepted in cross examination that this paragraph referred to the carer KR.

82. The tribunal accepts that the claimant did raise with Joanne Henderson her concerns about a breach of regulations concerning KR's hours. She was undermined by Joanne Henderson then changing the rota to put KR on it. It is

not for this tribunal to decide if he was working excessive hours but it is satisfied the claimant did raise with Joanne Henderson that she believed this was and in breach of health and safety. The text messages confirm it was being discussed.

83. The detrimental treatment then sustained by the claimant was being undermined by Joanne Henderson who put KR on the shift anyway even though the claimant had not done so, as to do so would have led him into excessive hours. The tribunal has drawn assistance from the Ofsted report which only a few weeks later confirmed a case of excessive hours which Joanne Henderson acknowledged related to KR.

Disclosure 6 – 17 January 2021 – informing Joanne Henderson that she had witnessed unprofessional processes, was disgraced at the lack of qualifications of staff and that respondent was not complying with its legal obligations.

84. On 17 January 2021 Rebecca Fairweather sent to the claimant a letter regarding issues they had discussed on 15 January 2021. This concerned KR's hours. The claimant forwarded it to Joanne Henderson at 1:08 pm on 17 January expressing her concern that KR had done overtime when she had ensured that this did not happen. She stated that he openly told them that "he calls you and you allow him to do this. K was given a 24 hour as an extra with BB then left to come straight to KR then straight on to HT".

85. The claimant relied on a document seen at page 197. This was addressed to Joanne and stated the claimant wanted to raise how she was currently unhappy and deeply disappointed with some of the ways the respondent was run and would like Joanne to be aware she was actively seeking employment elsewhere. It stated how she had witnessed unprofessional processes with little to no communication and other staff not really knowing what they should be doing. This document is not dated. The claimant explained in evidence that it was a photograph of what she had typed before sending it. She had asked for a copy of the original but the respondent had said they had not got it. She believed that the original did exist.

86. The tribunal cannot accept that this document was sent. If it had been it would have been easy for the claimant to show that from her computer system.

87. What was in evidence was that seen on page 193 that the claimant received a missed call from Joanne Henderson at 10:36. The claimant stated that she did call Joanne before she resigned. The resignation email that was sent was at page 206 and was sent at 10:41 on 17 January. At that point, the claimant did not have Rebecca Fairweather's email as that was not sent until 12:51 on 17 January. It does not seem feasible to the tribunal that in the 5 minutes before the claimant's resignation email was sent she and Joanne Henderson did have a phone conversation. It does not therefore accept the disclosure was made on 17 January 2021.

Disclosure 7 (this is the same as 4c) – telling Joanne Henderson that staff were being asked to carry out risk assessments when they were not trained to do so

88. This disclosure related to risk assessments on properties used by the respondent and not those about a young person. The further particulars had placed this conversation at 15 January 2021 but in cross examination the

claimant stated it was around the 12 or 13 and that 15 was a mistake. The claimant could not attend a property to do a risk assessment as she was self isolating with her son who had Covid. The tribunal was taken to text messages between the claimant and Joanne Henderson which appeared at pages 329 - 331. The tribunal did not see the whole chain of messages and these were not particularly easy to read. What can be seen however is on the one that appeared at 329 the claimant did state she was not sure "how underqualified staff should be responsible for a risk assessment". Joanne Henderson's response seems to have been that they were not, but the claimant was responsible. The staff should do the first draft which is sent to the claimant and she then discuss it and amended as necessary. The claimant gave evidence that she never received a template made for this assessment as it did not exist.

89. The tribunal found this allegation too vague for it to hold that it did amount to a protected disclosure. There is only the reference to staff being "underqualified" and it does not find that enough information was given on this occasion for there to be a protected disclosure within the meaning of the legislation.

The claimant's resignation

90. The claimant resigned by email on 17 January 2021 timed at 10:41. In the email she stated that she was resigning with effect from that date but asked Joanne Henderson to confirm her notice period as she had yet to receive a contract. She expressed how disheartened she was that she had left a secure role as well as taking a pay cut to become a registered manager with the respondent. She stressed how she had received no induction or training and had to teach herself the computer systems. She had been spoken to rudely by Joanne Henderson on several occasions which she found unprofessional and unnecessary. She continued: –

> I cannot continue to work amongst what I can only describe as disorganisation, lack of experience and unqualified people who seem to be given roles they are not qualified for to keep people with the company…
>
> I've never worked anywhere where even the director has no qualification or real knowledge. Today you have undermined me, advising my team wrong without consulting me first. This isn't the first time you've done this! I'm fully aware that you yourself messaged K over Christmas pay and told him to tell me he was getting double. K made this no secret and I've actually viewed your messages to him. This causes me to have no trust in you or respect so I think it's best I leave as this is no foundation for a strong working relationship".

91. Joanne Henderson replied on the same day at 4:41 acknowledging receipt of the claimant's resignation and confirming her last day as 24 January 2021. She did not feel it would be helpful to respond to each of the points in the email. She acknowledged the claimant had articulated her views very clearly in their conversation the previous week. She stated: –

> "During the same conversation you were also clear that you feel I have acted unprofessionally towards you and expressed concerns over the abilities of colleagues. You repeated these points in your email saying we have "no adequate systems for anything" and we are "an accident waiting to happen". You are entitled to hold an

> opinion about me and my team, but I feel I cannot allow statements regarding the professionalism of the company to go unchallenged. As you know, we are OFSTED and CQC regulated and receive regular inspections from our Local Authority clients. We are not perfect, but we are far from the picture you paint."

92. Joanne Henderson acknowledged the good work the claimant had done with the young people in their care and she would be sorry to lose her.

93. The claimant did not speak to Joanne Henderson at that point put forwarded the email complaint she had received from Rebecca Fairweather

94. Joanne Henderson wrote to the claimant on 21 January 2021 following an attempt to speak with the her by telephone which had resulted in a WhatsApp message from the claimant asking that any future contact be by email. Joanne Henderson stated that following a meeting with the team she had been made aware of a series of alleged communications by the claimant to parties inside and outside of the company. She stated that these ranged from bringing the company into disrepute to using bullying and upsetting language to the claimant's colleagues. Although perfectly entitled to hold a view about her, about colleagues and the company the claimant was not entitled to act in a way that brought the company into disrepute or upset colleagues. In the circumstances she felt it appropriate to remove the claimant immediately from working with KR. She asked that she complete her handover with Michelle Scott and not to have any contact with other staff, customers or suppliers for the remainder of her notice period. She asked that the any property or keys be handed over by 25 January. The claimant's contractual notice period would continue and she was effectively on garden leave with immediate effect.

95. The claimant replied on the same day asking that Joanne Henderson expand on a series of allegations made. She queried how she could do at handover if she was not to communicate with anyone within the company. The claimant followed this up with an email of 27 January asking for the allegations against her so that she could seek legal advice. This was responded to by Jonathan Smith, director of the respondent. He stated that since the claimant had left the company there would be no point investigating the matters Joanne Henderson had raised and therefore there was no formal complaint against her. He considered the matter closed and therefore they had no obligation to provide her with any further information. He found that from a reading of the various emails surrounding the resignation the claimant clearly felt the company had let down and failed to meet her expectations and he would "agree that we could have done things better and we need to learn lessons for the future.

96. The claimant submitted a detailed complaint to Jonathan Smith dated 1 February 2021. As that was post resignation the tribunal need not go into it detail but some of the content is relevant as it is a contemporaneous document close to the claimant's resignation. The claimant made it clear that:

> 'I have verbally and directly in email raised other concerns and even passed Joanne complaints from other support workers. However, it appears to fall on deaf ears and I've quickly become victimised over the matters and the target of slander and defamation of character. As a director of a company, Joanne Henderson has full responsibility to arrange a safe time and place for me to discuss my concerns but instead, she has ignored them, tried to oppress me using volatile manners, hostility and threatening terminology. This treatment made it difficult to discuss my concerns'.

Relevant Law

97. The claimant claims she was submitted to both detriments and then dismissal for raising protected disclosures. The following are the relevant provisions of the Employment Rights Act 1996 (ERA) that the tribunal must apply:

> **43B Disclosures qualifying for protection.**
>
> (1) In this Part 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 following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

> **47B Protected disclosures.**
>
> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

> ***103A Protected disclosure.***
>
> An employee who is dismissed shall be regarded for the purposes of this Part 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.

98. In determining whether the claimant made a protected disclosure it is the reasonableness of the belief which is important and not whether the claimant was right about the matter being disclosed. There must however be a disclosure of information and not merely an allegation. In Karen Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436, the Court of Appeal made it clear that that the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. In the EAT Langstaff J (as he then was) had said:

> The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation

> are intertwined. The decision is not decided by whether a given phrase or paragraph is one or rather the other but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point.

99. Lord Justice Sales made it clear in the Court of Appeal that

> 'although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1) , not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision.

100. In considering detriment and dismissal claims the tribunal must bear in mind the difference in wording. The detriment must be 'done on the ground that' the claimant made a protected disclosure. For dismissal the protected disclosure must be the reason 'or if more than one the principal reason'.

101. In the case before this tribunal the claimant resigned and claims constructive dismissal. She must therefore show a fundamental breach and the test laid down in Western Excavation (ECC) Ltd v Sharp [1978] IRLR 27 is still the appropriate test:

> If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.

102. The claimant relies on a breach of the implied term of trust and confidence (Mahmud v Bank of Credit and Commerce International SA [1997] [IRLR 462 HL)

103. The respondent whilst denying any protected disclosure and breach of the implied terms states that the reason for the claimant's resignation was multi faceted and not due to those factors. Reference was made to the guidance in Salisbury NHS Foundation Trust v Wyeth UKEAT/0061/15. The EAT in that case referred to the distinction between the detriment provisions and s103A and Elias LJ statement of the correct approach in Fecitt and Ors v NHS Manchester [2012] IRLR 64. He stated that:

> 'Liability arises if the protected disclosure is a material factor in the employer's decision to subject the claimant to a detrimental act…'

He accepted there was an anomaly with the situation of unfair dismissal where the protected disclosure must be the sole or principal reason but cited Mummery LJ in Kuzel v Roche Products Ltd [2008] IRLR 530 in which he emphasised that unfair dismissal and discrimination were different causes of action and that

'…the better view is that s47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower…'

104. The EAT continued in the Wyeth case that what is the principal reason is a 'reason why' question and not a 'but for' test. Where an employment tribunal has to identify whether a protected disclosure was the reason or principal reason in constructive dismissal case, it will be important 'to ensure that the correct focus is maintained'. Referring to the case of Berriman v Delabole State Ltd [1965] ICR 546 CA it is the employer's reason for their conduct not the employee's reaction to that conduct which is important. At paragraph 31 of the Wyeth case the EAT stated:

'In such a case, the ET will have identified the fundamental breaches of contract that caused the employee to resign in circumstances in which she was entitled to claim to have been constructively dismissed. Where no reason capable of being fair for section 98 purposes has been established by the employer, that constructive dismissal will be unfair. Where, however, the reason remains in issue because there is a dispute as to whether it was such as to render the dismissal automatically unfair, the ET then has to ask what was the reason why the Respondent behaved in the way that gave rise to the fundamental breaches of contract? The Claimant's perception although relevant to the issue why she left her employment (her acceptance of the repudiatory breach) does not answer the question.'

105. In the case before this tribunal the claimant did not have two years qualifying service to enable her to bring a complaint of ordinary unfair dismissal. The burden therefore falls on the claimant to show that the tribunal has jurisdiction to hear her complaint and that the circumstances fell within the automatically unfair grounds set out above which she relies upon. (Kuzel v. Roche Products Ltd [2008] IRLR 530)

106. The respondent states that the claimant had other reasons for leaving her employment (paragraph 49 of counsel's submissions). The delay in Cherry Lodge, the KR Xmas pay issue, feeling undermined, not giving the claimant training and the claimant working amongst people she viewed as unqualified. It has been made clear in the case law that sometimes there will be more than one reason why an employee leaves a job. The tribunal must determine whether the employer's repudiatory breach was an effective cause. However the breach need not be the effective cause (Wright v North Ayrshire Council 2014 ICR 77 EAT). The then President of the EAT Mr Justice Elias stated in Abbycars (West Horndon) Ltd v Ford EAT 0472/07 that:

'the crucial question is whether the repudiatory breach played a part in the dismissal'.

107. The tribunal must then also bear in mind the wording of section 103A that the reason 'or if more than one the principal reason' was the making of the protected disclosure(s). That acknowledges there may be more than one reason.

CONCLUSIONS

108. The tribunal has found that the claimant did make the following protected disclosures:

> 25 November 2020 – the claimant telling Joanne Henderson that it was illegal and unsafe that the young person (YP) had been placed into an unregistered care home run by the respondent
>
> 3 December 2020 – the claimant telling Joanne Henderson that Christopher Borg had not been restraint trained and should not have been assigned this shift as it is illegal.
>
> On or about 28 December 2020 the claimant telling Joanne Henderson that TC was breaching health and safety and crossing professional boundaries.
>
> On or about 14 January 2021 telling Joanne Henderson there was or would be a breach of regulations concerning KR's hours.

109. On each occasion the tribunal has concluded that the claimant was subjected to detrimental treatment by being shouted at, demeaned in front of colleagues and undermined by Joanne Henderson. It is satisfied that the reason for that treatment was the making of those disclosures. Joanne Henderson did not want someone challenging her about the way she was running the respondent and telling her that she was failing to follow regulations and putting the health and safety of others at risk.

110. The manner in which the claimant was treated amounted to a fundamental breach of the implied term of trust and confidence that the employer should not (in the words used in Malik) 'without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

111. In considering why the respondent through Joanne Henderson acted as it did in most of the cases she denied that the conversation had even taken place. The tribunal has not accepted that evidence. She had sought to deny the claimant was in the office when her own documents demonstrated that she was. A very significant admission by her was denying that she had shouted at the claimant following her disclosure on 3 December 2020 but then conceding 'I spoke to you in a way you were not happy with' and accepted that she must have 'spoken in a way that would upset someone'. That is a detriment.

112. The tribunal has also taken into account when considering the detrimental treatment the evidence of both Charlotte Wright and Hannah Kossowska – Peck about the way in which they had seen Joanne Henderson behave to them and others.

113. The tribunal does not accept that the failure to issue the claimant with a contract was 'on the ground that' the claimant had made protected disclosures. It is quite clear from the findings that have been made that Joanne Henderson expected Charlotte Wright to deal with that even though she had no experience in drafting such contracts. Eventually in evidence Ms Henderson acknowledged it was her own responsibility. That is the reason it was not done not the protected disclosures. The fact still remains that at the time of her resignation the claimant had not been issued with a contract.

114. The authorities accept that an employee who resigns may have many reasons for doing so. The claimant had concerns about her lack of a contract and the position with regard to Cherry Lodge. The tribunal however is satisfied that the principal reason the claimant resigned was the manner in which she was treated by a director of the respondent when she made the protected disclosures to her.

115. The claims therefore of detriment and automatically unfair dismissal succeed (in relation to the disclosures the tribunal has found). A remedy hearing will be listed and case management orders are set out in a separate document.

Employment Judge Laidler

05 September 2022

Sent to the parties on:

23 September 2022

For the Tribunal: