



THE EMPLOYMENT TRIBUNAL

Claimant
Ms S Coyle

Respondent
v Easyjet Airline Company Ltd

Heard at: London South Employment Tribunal (Ashford)

On: 20 and 21 February 2023

Before: Employment Judge Martin

Appearances

For the Claimant: In person

For the Respondent: Ms Barry - Counsel

REASONS

1. Reasons were given at the conclusion of the hearing. In correspondence after the hearing, it was clear that the claimant I found it difficult to process the oral judgment given. Therefore, it is in the interests of justice for these written reasons to be provided.
2. The Claimant presented a claim on 12 December 2020 claiming detriment for raising a protected disclosure (whistleblowing). In its response the Respondent accepted that the disclosures the Claimant relied on were protected disclosures. The Tribunal did not therefore have to consider this point and proceeded on the basis that they were valid public interest disclosures.

The hearing

3. The tribunal heard from the Claimant and from Ms Louise Moriarty and Ms Natalie Puncher (Crew Operations Manager). There was a joint bundle of documents before the tribunal. Regular breaks were offered for the Claimant to help her manage the hearing.
4. The Claimant was employed by the Respondent from 3 March 2020 until 31 October 2020. She was employed on a fixed term contract. The expectation when she was employed was that her employment would continue. However, things changed because of the Covid-19 pandemic and her employment

terminated at the end of the fixed term period.

The issues

5. The issues that the Tribunal needed to consider were recorded in a case management order made by Employment Judge Siddall as follows:

“At the hearing today most of the claims were struck out but the claim for whistleblowing will proceed. The claimant asserts that she was subjected to a detriment for making a protected disclosure. This is the only claim that will now proceed.

Her case is:

3.1 The claimant says that she raised a grievance on 20 October 2020 about health and safety and the security operations of the respondent and this amounted to a protected disclosure.

3.2 The claimant says that she suffered detriments on the grounds that she made this disclosure, in that:

3.2.1 The Respondent talked over her during the grievance meeting.

3.2.2 They did not properly investigate her health and safety concerns.

3.2.3 There was a delay in investigating and giving the outcome of her grievance; and

3.2.4 They dismissed her health and safety concerns.”

Findings of fact

6. The following findings relate to matters which are relevant to the issues, and which are necessary to explain the decision. All evidence was considered even if not specifically recorded below. These findings were made on the balance of probabilities. As the Respondent has accepted that the Claimant's grievance amounted to a protected disclosure the Tribunal has not made any findings about the disclosures themselves but has made findings about whether the matters complained of happened and if they did happen whether the reason they happened was because the Claimant had made a protected disclosure.
7. The Claimant worked at Gatwick airport as cabin crew. Her protected disclosures were contained in a grievance she wrote on 20 October 2020. Her grievance was acknowledged on 23 October 2020 and the grievance hearing was held on 3 November 2020 by Ms Moriarty. Ms Piper from HR told the Claimant that she was on holiday and that therefore she was unable to arrange the hearing earlier. Following the grievance hearing Ms Moriarty conducted further investigations by talking to two people named in the grievance, the ID Team and New Hire Team who were expert in the areas to be investigated. The Grievance outcome was given on 10 November 2022.

8. The grievance policy provides that a grievance will be acknowledged within 5 working days and the outcome will be given within 10 working days unless further investigations are needed in which case it may take longer. The dates are indicative dates rather than prescriptive dates.
9. The Claimant was accompanied by her trade union representative, Mr Irwin to the grievance hearing. The Claimant accepted in her evidence that she was able to answer the questions asked and was not interrupted. Her complaint given in evidence was that there were two people from the Respondent's side which she found confusing and overwhelming. The Claimant said that Mr Irwin sent her a message after the grievance hearing saying she had done very well which confirmed that she was talked over. She did not disclose this message and Mr Irwin did not attend to give evidence.
10. Ms Puncher did not personally speak to all those interviewed. She delegate some of the investigation process to HR. However, the Tribunal find that she reviewed all the information received and asked for further information to be obtained. She then made her decision based on the information received. The Tribunal does not find it was necessary for her to conduct all interviews in the investigatory process.
11. As part of her investigation the two people named in the grievance were interviewed. This was because first, the Claimant had complained about them in her grievance and second they had knowledge of airside passes within the airport.
12. The Claimant appealed on 18 November 2020 and notwithstanding that she had by then left the organisation, the Respondent heard her appeal with the outcome being given on 11 December 2020. Ms Puncher heard the appeal and did her own investigations after the appeal hearing.
13. Due to the pandemic the grievance hearing was heard by video link. For some reason not clearly explained, the video was turned off, so it was akin to a telephone meeting. The Claimant initially had problems getting online and joining the hearing but was assisted by her union representative and did manage to join the hearing. As often happens on these types of video meetings, people go to talk at the same time. The Respondent provided notes of the hearing which indicated that they asked questions, and the Claimant was able to respond to those questions. Ms Piper from HR was present and asked a question on five occasions. Ms Moriarty who was hearing the grievance asked most of the questions.
14. The Claimant said she had her notes of the hearing which showed something different. However, these were not disclosed and not part of the bundle of documents before the Tribunal. The Tribunal can only proceed on the evidence that it has before it.
15. The disclosures related to airside passes. The Claimant's case is that she was allowed airside access despite not having the correct airport pass. The

Respondent's case is that they had an arrangement with Gatwick Airport that an EasyJet pass was sufficient to gain airside access if the person was escorted airside. A Gatwick pass would mean that the person need not be escorted. It was accepted that the Claimant's concerns about her access was a protected disclosure in the public interest.

16. The Claimant says that the Respondent talked over her during the grievance hearing which was held by video link.

Submissions

The Claimant

17. The Claimant provided written submission and in addition made oral submissions. They are summarised below.
18. The whole grievance should take 10 days, but it took nearly 2 months, and this did a lot of damage to me. Communications could have been better, so I knew what was happening. There was an Impact on my abilities and communications. I hope the Respondent takes lessons from today.

Respondent's submissions

19. The Respondent provided written submissions and in addition made oral submissions. They are summarised below.
20. Was the Claimant put at a disadvantage? We need to look at how a reasonable worker would view detriment. The Respondent says there was not a detriment. In relation to causation, it is not enough that an employee suffers some detriment, it must be shown that any detriment was caused by a deliberate act on the ground that the Claimant made a protected disclosure. There must be a causal link.
21. There is no evidence that the Claimant was treated differently from a hypothetical comparator. The protected disclosure did not materially influence what happened.
22. The burden of proof is on the Claimant to show the reason. There are similarities with discrimination. The Respondent adequately explained the reason for all the matters the Claimant was concerned about in this case.
23. When looking at causation the Tribunal needs to consider the mental process of those concerned; they must be motivated by protected disclosure. The Respondent witnesses were clearly relying on other people providing them with information about the Grievance - there no suggestion they were fed wrong info because the Claimant made a protected disclosure, indeed it is not clear they were aware of any protected disclosure.
24. In relation to the Claimant's complaint that she was talked there was no

- evidence this happened. In cross-examination she said she not listened to because she had questions being asked by two people. Ms Moriarty and Ms Piper were not interrupting, they were probing to get to heart of issue. This was an effective process. This was not part of her appeal and not in the appeal letter. The only complaint is Ms Piper talked all way through which is not correct.
25. Taking the Investigation and dismissal of the Claimant's concerns together. The Claimant is critical of investigation and felt her concerns were dismissed. The Claimant accepts Ms Moriarty spoke to right people namely the New Hire team and ID team. She had concerns that the two people named in her grievance were interviewed but they were appropriate people given she had complained about them.
26. Ms Puncher relied on HR assistance in her investigation, but the New Hire team and ID team were spoken to, and Ms Puncher sent her back to clarify matters. It is very clear that as far as they were concerned the Claimant had a valid Easy Jet pass and did not need a London Gatwick pass. The Claimant did not suggest when asking Ms Moriarty questions that she had come to her conclusions because of the protected disclosures. The Claimant simply disagrees with outcome.
27. Any delay in dealing with the grievance was minimal. The grievance to a meeting was 14 days. The meeting to outcome was 10 days and to appeal 3 weeks. Given the number of documents, the detail (there were many more matters in the grievance than the protected disclosures) and number of issues. There was no undue delay, and no link to any protected disclosures.
- The Tribunal's decision**
28. Having found the factual matrix set out above, the Tribunal has come to the following conclusions on the balance of probabilities.
29. First the Tribunal wishes to make clear the parameters of its decision. It is not here to comment on or say whether there are safety issues at the airport in relation to the provision of airside passes. The Tribunal has confined its decision to those matters set out in the list of issues. What the Tribunal is concerned with is the processes the Respondent adopted and whether there was a causal connection with the protected disclosures. I emphasised during the hearing that just because the grievances raised were protected disclosures it did not follow that how the Respondent conducted the grievance was because of any protected disclosure made. They are two distinct matters.
30. The first issue is whether the Respondent talked over the Claimant during the grievance hearing. There was no evidence before the Tribunal that this took place. The Claimant says she had notes which would show this, however they were not disclosed and not before the Tribunal. In any event the Claimant's oral evidence does not suggest she was talked over. Her evidence is that there were two people asking questions. The Respondent's

- notes of this meeting do not show that the Claimant's trade union representative who accompanied her complained about this during the hearing which would be expected if the Respondent was talking over the Claimant, or he would have followed up afterwards. There was no communication from her trade union representative to the Respondent in the bundle and no evidence was given by the representative. The message the Claimant said she had from Mr Irwin was not before the Tribunal.
31. We appreciate that the notes in themselves cannot convey the tone or dynamic of the conversation. However, what we can see from the notes is that the Claimant was asked questions which she answered. Despite the Claimant saying that Ms Piper talked all the time, the notes show that Ms Piper only spoke about 5 times total. Ms Moriarty was the main questioner with a couple of interjections by the Ms Piper. This is not an unusual scenario.
 32. The Claimant complains that there was no investigation, and her concerns were dismissed. The Tribunal find that there was an investigation and the Claimant's concerns were not dismissed without an investigation being carried out. We heard what Ms Moriarty and Ms Puncher said about who they spoke to including the Hire team and the ID team. These are people with expertise in the matters and were the appropriate people to approach. They also spoke to the two people mentioned in the grievance. The Claimant says this was inappropriate as she had complained about them. Given she had made complaints against them it was appropriate they were spoken to about that and the safety issues.
 33. In any event, the Respondent did not just speak to them. They also spoke to the New Hire Team and ID team who the Claimant accepts were appropriate people to talk to. Clearly the Respondent took her allegations seriously by going to the experts in these areas and they then made their own decision based on the information obtained during their investigation. Ms Puncher also has her personal knowledge of the ID system at Gatwick airport and the processes involved.
 34. The Claimant complains that there were delays in the grievance process. The grievance policy does not give a strict timetable but an indicative one. The Claimant was invited to the grievance hearing within 5 days of her grievance letter. Ms Moriarty and Ms Puncher needed to conduct investigations after the meeting. Given the extent the grievance and the seriousness of the complaints, 10 days for a response to the grievance is reasonable and in the Tribunal's experience quite quick. The Tribunal appreciates that the Claimant found the time taken stressful, however in the context of an employer carrying out an investigation of this type and coming to a conclusion based on that investigation, the time taken was reasonable.
 35. However, the crucial point is that even if we had found these to be detriments, there was no evidence that they way the grievance was conducted and decided was motivated by the protected disclosures. Ms Puncher said she dealt with it as she did with all grievance investigations, and she is very

experienced. Ms Moriarty was not asked about this in cross examination. She is also very experienced. The Claimant did not say that she considered the way the grievance carried was because of disclosures she had made. There is a difference between the subject matter of the grievance and the motivation behind how the grievance is conducted. The only time she mentioned this was at the end of her evidence, after the Employment Judge spoke to her about the difference between the subject matter of the grievance and the motivation for the way that the Respondent acted. She then said that they did not want the truth to come out. However, the Claimant clearly said in answers to more than one question by Ms Bully that she did not know why they conducted the investigation in the way that they had.

36. The Tribunal therefore dismisses the Claimant's claims.

Employment Judge Martin
Date: 15 March 2023

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