



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103774/2022**

**Held in Glasgow on 29 and 30 March 2023**

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**Employment Judge: A Strain (sitting alone)**

**Mr Scott McCallie**

**Claimant  
Represented by:  
Mr G Singh –  
Solicitor**

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**Colin Boyd**

**Respondent  
In Person**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that:

1. The Claimant did not make protected disclosures as claimed by him.
2. The reason (or principal reason) the Claimant was dismissed was not that the Claimant had made a protected disclosure contrary to section 103A of the Act; and
3. The Claimant's claim is unsuccessful and is dismissed.

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**Background**

1. The Claimant presented his ET1 on 7 July 2022 which contained various claims including unfair dismissal, notice pay and arrears of pay. He asserted claims of the Respondent overcharging customers and of recording payments through PAYE to him which hadn't been paid into his account.
2. He lodged further and better particulars on 17 October 2022 which modified the claims to automatic unfair dismissal under section 103A of the Employment Rights Act 1996 (**ERA**). It was asserted that the

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5 Claimant made 2 protected disclosures (1) that customers were being overcharged and (2) that the Respondent was mismanaging the payroll and not fulfilling his obligations towards company accounting and tax. The Claimant lodged further and better particulars of the protected disclosure claim on 7 & 8 February 2023 which stated the legal obligations in respect of both claims were (1) a breach of section 51 of the Consumer Rights Act 2015 and (2) a breach of section 67 of the Income Tax (Pay As You Earn) Regulations 2003.

10 3. The Respondent's position was that the Claimant had been dismissed due to lack of work and that no protected disclosures had been made. There had been no overcharging of customers and no mismanagement of the payroll.

15 4. The issue for the Tribunal to determine was whether or not the reason (or principal reason) for the dismissal was that the Claimant had made a protected disclosure contrary to section 103A of the Act.

5. The remedy sought by the Claimant was compensation.

6. The Parties had lodged an agreed Joint Bundle of Documents with the Tribunal and some additional documents on the morning of the Hearing.

20 7. The Claimant gave evidence on his own behalf. For the Respondent, Mr Gerard Sheridan (**GS**), Accountant, gave evidence as did the Respondent.

### Findings in Fact

25 8. Having heard the evidence of the Parties and considered the documentary evidence before it the Tribunal made the following findings in fact:

- (1) The Respondent was a sole trader engaged in the provision of roofing and slating services;

- (2) The Claimant was employed by the Respondent as a Slater's Labourer from 6 December 2021 until his employment was terminated on 2 May 2022;
- (3) GS issued the Claimant's first payslip to him (Page 88) which erroneously contained a figure of £3,873.60 in benefits received by the Claimant from DWP as Taxable Gross Income.
- (4) GS issued the Claimant's P60 in April 2022 which still included the erroneous figure of £3,873.60 as income from his employment with the Respondent.
- (5) The Claimant raised the issue of the incorrect figure in his P60 with the Respondent in person and by text of 4 April 2022 (Page 189). In that text the Claimant asserted that money was "missing from my income". The Respondent explained in his text response that the DWP Benefits had been included in the P60. The Respondent suggested that the Claimant contact GS to discuss.
- (6) GS offered to amend the P60 following termination of the Claimant's employment and during the ACAS conciliation period. The offer was not taken up by the Claimant.
- (7) On 7 April 2022 the Claimant text the Respondent (Page 194) asserting that the Respondent charged a lot more for him on some jobs but hadn't realised how much more until the "Quadrant Job".
- (8) The "Quadrant job" was work done in December 2021 for Mr S Walls.
- (9) The Respondent provided an estimate to Mr S Walls in connection with replacement of defective gutters and painting on 8 December 2021 in the sum of £2,600 (Page 221). He invoiced and received payment in the amount of £2,600 for this job on 18 December 2021 (Page 222 and 223).

5 (10) In a telephone conversation between the Parties on 2 May 2022 (Pages 225-239) the Respondent informed the Claimant that he (Respondent) couldn't continue to work due to problems with his back, not much work coming in and only two or three "wee jobs" left to do. He did not have enough work for both the Claimant and himself.

10 (11) The Respondent also said that he had let work go due to the situation between them both in that he had been called a liar and accused of defrauding the Claimant out of £4,000. The trust had gone between them.

(12) The Respondent sought to explain the figures in the Claimant's P60 in the course of that call.

(13) The Respondent confirmed the termination of employment in a letter of 2 May 2022 to the Claimant (Page 240).

15 **The Relevant Law**

9. The Claimant asserts a complaint of automatic unfair dismissal in breach of section 103A of the Act. Section 103A renders the dismissal of an employee automatically unfair where the reason (or, if more than one reason, the principal reason) for his dismissal is that he made a protected disclosure.

20 10. The onus of proof is upon the Claimant (***Kuzel v Roche Products Ltd 2008 ICR 799 CA*** and ***Smith v Hayle Town Council [1978] I.C.R. 996.***)

*Qualifying protected disclosure*

25 11. In terms of sections 43B – 43H of the Act to be a qualifying protected disclosure the Claimant needs to satisfy the Tribunal that:

- (a) There was a disclosure of information;
- (b) The subject matter of this disclosure related to a "relevant failure";

- (c) It was reasonable for him to believe that the information tended to show one of these relevant failures;
- (d) He had a reasonable belief that the disclosure was in the public interest; and
- 5 (e) the disclosure was made in accordance with one of the specified methods of disclosure.

*Disclosure of information (section 43B(1))*

12. The Employment Appeal Tribunal in the case of **Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325** provide  
10 guidance to the Tribunal highlight a distinction between “information” and an “allegation”. The EAT held the ordinary meaning of “information” is conveying facts”. **Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436, CA** highlights a distinction between “information” and an “allegation”. The Court of Appeal in **Kilraine** noted that there can be  
15 a distinction between “information” (the word used in ERA 1996 s.43B(1)) and an “allegation”. However, the concept of “information” as used in ERA 1996 s.43B(1) is capable of covering statements which might also be characterised as allegations.

*There must be a Qualifying Disclosure (section 43B(1)(a-f))*

- 20 13. 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,
  - 25 (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.

14. This requires the Tribunal to consider whether or not the disclosure was (in the reasonable belief of the Claimant) (i) in the public interest and (ii) showed one or more of the matters contained within section 43B(1)(a-f).

10 *Reasonable Belief*

15. It is the Claimant's belief at the time of disclosure that is relevant and it is not necessary for the Claimant to prove that the information disclosed was actually true (***Darnton v University of Surrey 2003 IRLR 133***). The Tribunal must assess the Claimant's belief on an objective standard (***Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4***).

16. The EAT in ***Phoenix House Ltd v Stockman and anor 2016 IRLR 848***, give further guidance on the approach to be adopted : "*on the facts believed to exist by an employee, a judgment must be made as to whether or not, first, that belief was reasonable and, secondly, whether objectively on the basis of those perceived facts there was a reasonable belief in the truth of the complaints.*"

*Public Interest*

17. The approach to be adopted by a Tribunal in considering whether a disclosure was in the public interest was as set out by the Court of Appeal in ***Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979***. The Tribunal should determine whether the employee subjectively believed at the time of the disclosure that disclosure was in

the public interest. If it was then the Tribunal should ask whether that belief was objectively reasonable.

*Disclosure must be made to person specified in section 43C to H.*

18. In order to be a protected disclosure the Tribunal must consider to whom  
5 the disclosure was made and whether they fell within sections 43C-H.

*The reason (or, if more than one reason, the principal reason) for his dismissal*

19. Once the Claimant has established that he made a qualifying protected  
disclosure he must then establish that the fact of making the disclosure  
was the reason (or, if more than one reason, the principal reason) for his  
10 dismissal.

20. In determining what the reason or principal reason for the dismissal was  
the Tribunal should ask itself whether, taken as a whole, the disclosures  
were the principal reason for the dismissal (*El-Megrisi v Azad  
University (IR) in Oxford EAT 0448/08*).

## 15 **Submissions**

21. Both Parties made submissions orally and the Claimant also submitted  
written submissions.

*The Claimant*

22. The Claimant submitted that he made 2 protected disclosures. One by  
20 text on 4 April 2022 and the other by text on 7 April 2022. Both were also  
raised in person (unspecified dates)

23. The text on 4 April 2022 raised concerns about the inaccuracy of the  
figure for income in his P60 whilst the text on 7 April 2022 raised concerns  
that Mr Walls had been overcharged.

- 25 24. It was submitted that these were qualifying disclosures under section 43B  
of ERA.

25. The Claimant had a reasonable belief that the Respondent was overcharging customers, that belief was reasonably held and it was in the public interest to raise it with the Respondent.

5 26. The Claimant had a reasonable belief that the Respondent was mismanaging his payroll, that belief was reasonably held and it was in the public interest to raise it with the Respondent.

27. The reason or principal reason for the Claimant's dismissal was the protected disclosures.

### *The Respondent*

10 28. The Respondent submitted that the Claimant did not have a reasonable belief that the Respondent was mismanaging his payroll and that belief was not reasonably held. The Respondent had tried to explain the inclusion of the DWP Benefits figure and GS had offered to have the P60 corrected (albeit post-termination).

15 29. The Respondent did not overcharge Mr Walls. He provided an estimate and invoiced the amount estimated. He did not receive the sum of £6,600 for the job as alleged by the Claimant.

30. The Claimant had no reasonable basis to believe that Mr Walls had been charged £6,600 by the Respondent.

20 31. Section 51 of the Consumer Rights Act 2015 only applies where no price is agreed. In this case a price had been agreed and paid.

32. At no point had the Claimant said to the Respondent that he was overcharging customers, instead he asserted that the Respondent was charging more for him on jobs.

25 33. The disclosures were not qualifying disclosures and did not form part of the decision to dismiss.



## Discussion and Decision

### *The Claimant*

34. The Tribunal did not find the Claimant's evidence to be credible or reliable.

5 35. The Claimant had clearly raised the issue of the erroneous inclusion of the DWP Benefits in his P60. The Respondent had dealt with his query and referred to his accountant (GS). GS had offered to rectify albeit after the Claimant's termination of employment.

10 36. The Tribunal considered the claim that this was a disclosure of mismanagement of the payroll to be exaggerated and contrived. In the ET1 lodged by the Claimant it is clear that he is asserting (post termination) that there were payments made through PAYE that hadn't been put into his bank account. He appeared to be looking for payment of the additional amount rather than asserting mismanagement of the payroll.

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37. By the time of the lodging of the further and better particulars this claim has morphed into an assertion that the Respondent had mismanaged the payroll.

20 38. In the text relied upon by the Claimant as constituting the disclosure on 4 April 2022 by the Claimant does refer to the figures in his P60 but in the context of "missing from my income" – not mismanagement of his payroll.

39. His evidence was accordingly inconsistent and the Tribunal did not accept it.

25 40. The claim of overcharging customers appears to have been developed by the Claimant after the termination of his employment.

41. The text relied upon him as the "disclosure" did not raise any issue of overcharging of customers. It raised issues of charging more for him on some jobs.

42. The Tribunal considered the claim that this was a disclosure of overcharging of customers to be contrived.

43. His evidence was accordingly inconsistent and the Tribunal did not accept it.

5 *The Respondent*

44. The Claimant's evidence can be contrasted with that of the Respondent. The Tribunal accepted the evidence of the Respondent and GS. Both gave evidence that was clear and consistent with the documentary evidence that had been produced. Their evidence was measured,  
10 considered, credible and reliable.

45. The Respondent produced documentation to support his position that there had been no overcharging of Mr Walls. He produced the estimate and invoice along with confirmation of the receipt of funds in payment.

46. His evidence regarding the error in the P60 was straightforward and understandable. There had been a mistake. He had tried to explain this  
15 to the Claimant after discussing with GS. He had asked the Claimant to speak to GS. GS had offered to rectify the P60 but that offer was not accepted.

47. The Respondent was corroborated by GS. GS candidly accepted there  
20 had been an error in the initial payslip which had been replicated in the P60.

48. The Respondent's reasons for terminating the Claimant's employment were corroborated by the transcript of the conversation on 2 May 2022.

49. For all these reasons the Tribunal preferred and accepted the evidence  
25 of the Respondent and GS.

50. The Tribunal then went on to consider whether or not the Claimant had made qualifying protected disclosures to his employer.

*Qualifying Protected Disclosure**Text of 4 April 2022*

51. The text relied upon by the Claimant as constituting the disclosure by the Claimant does refer to the figures in his P60 but in the context of “missing from my income” – not mismanagement of his payroll.
52. The Tribunal did not accept that a disclosure was made to the Respondent as claimed by the Claimant.
53. The Claimant also asserts that he made the disclosure in person around this date. The Tribunal did not accept his evidence on this point. The Claimant did query the figures in his P60 but this was in the context of his belief that money was missing from his income rather than mismanagement of the payroll.

*Text of 7 April 2022*

54. The text relied upon by the Claimant as constituting the disclosure by the Claimant does not refer to overcharging customers. Rather it relates to It charging more for him on some jobs.
55. The Tribunal did not accept that a disclosure was made to the Respondent as claimed by the Claimant.
56. The Claimant also asserts that he made the disclosure in person around this date. The Tribunal did not accept his evidence on this point. The Claimant did maintain to the Respondent that he was charging more for him on some jobs but this was in the context of his belief that money that had gone through PAYE was missing from his income rather than overcharging of customers.
57. Having found that the disclosures were not made as claimed by the Claimant the Claimant's claim fails.

*Reason for Dismissal*

58. The Tribunal accepted and found that the reason or principal reason for the dismissal was lack of work and the Respondent's back problems.

59. The claim is accordingly unsuccessful and is dismissed.

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**Employment Judge: A Strain**  
**Date of Judgment: 22 April 2023**  
**Entered in register: 26 April 2023**

10 **and copied to parties**