



EMPLOYMENT TRIBUNALS

Claimant: Mrs N A Ball

Respondent: Southport & Ormskirk NHS Trust

Heard at: Liverpool **On:** 15, 16, 18, 19, 22, 23, 24, 25 and 26 May 2023

Before: Employment Judge Horne

Representatives

For the claimant: Miss L Halsall, counsel

For the respondent: Mr J Boyd, counsel

JUDGMENT

Definitions

1. In this judgment:

- a. “the list of issues” means the list of issues agreed by the parties and provided to the tribunal on the first day of the hearing;
- b. paragraph numbers prefixed “D” (for example, “D3.1.3.3”) refer to the detrimental act or failure alleged in the corresponding paragraph in the list of issues; and
- c. paragraph numbers suffixed with a letter (for example, “D3.1.3.1(a)”) refer to paragraphs in the list of issues which alleged multiple detrimental acts or failures, separated by un-numbered bullet points. The tribunal allocated sequential letters to each bullet point.

Complaints not pursued

2. The following allegations of protected disclosure detriment are struck out on the ground that they are not actively pursued:

D3.1.3.10

D3.1.3.11

D3.1.3.16

Well-founded detriment complaints

3. The tribunal has jurisdiction to consider the complaints of protected disclosure detriment (the respondent having indicated that it does not contest the tribunal’s jurisdiction on the ground of the statutory time limit).

4. The claimant made a protected disclosure orally to Ms Amanda Laughane and two further protected disclosures by e-mail respectively on 16 and 19 April 2020.

5. In contravention of section 47B of the Employment Rights Act 1996, the respondent subjected the claimant to the following detriments on the ground that the claimant made a protected disclosure:

D3.1.3.1(d) – the respondent’s Deputy Human Resources Director sent the claimant an e-mail accusing her of behaving unpleasantly and aggressively towards managers.

D3.1.3.2(a) – the claimant’s line manager deliberately failed to support the claimant and in particular deliberately failed to ask the claimant if she wanted a referral to occupational health.

D3.1.3.4 – the respondent’s Deputy Human Resources Director accepted the account of Human Resources Business Partners uncritically and unquestioningly.

Detriment complaints not well-founded

6. The following allegations of protected disclosure detriment are not well founded and are dismissed:

D3.1.3.1(a),(b) and (c)

D3.1.3.2(b) and (c)

D3.1.3.3

D3.1.3.4 (except as described in paragraph 4 of this judgment)

D3.1.3.5 to D3.1.3.9

D3.1.3.12 to D3.1.3.15

D3.1.3.17 to D3.1.3.21

Discrimination arising from disability

7. The respondent did not discriminate against the claimant arising from disability.

8. In particular:

a. The respondent treated the claimant unfavourably by dismissing her partly because of emotional responses during the “SOSR” meeting, those responses having arisen in consequence of her disability, but the treatment was a proportionate means of achieving the aim of restoring working relationships within the Human Resources Team.

b. The respondent treated the claimant unfavourably by confirming the dismissal on appeal partly because of the claimant’s failure to accept an offer of redeployment, that failure having arisen in consequence of her disability, but the treatment was a proportionate means of achieving the aim of restoring working relationships within the Human Resources Team.

Unfair dismissal

9. The claimant was unfairly dismissed.

10. The dismissal was not unfair under section 103A of the Employment Rights Act 1996. The sole or principal reason for dismissal was the breakdown in working relationships. It was not that the claimant had made a protected disclosure.
11. The respondent acted unreasonably in treating the breakdown in working relationships as a sufficient reason for dismissing the claimant, because it failed to provide the claimant with the statements from colleagues upon which the investigation report was based.
12. The tribunal found that, had the respondent acted fairly, the claimant would inevitably have been dismissed by notice given on or about 8 June 2021. The amount of any compensatory award will reflect that finding.

Employment Judge Horne
31 May 2023

SENT TO THE PARTIES ON
9 June 2023

FOR THE TRIBUNAL OFFICE

Note:

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party makes a request in writing within 14 days of the date on which this judgment is sent to the parties. If written reasons are provided, they will be published on the tribunal's online register, which is visible to internet searches.