



EMPLOYMENT TRIBUNALS

Claimant: Mr H Singh

Respondent: Lionhart Security Services Limited

Heard at: By CVP at Midlands West Employment Tribunal

On: 18 – 20 September 2023

Before: Employment Judge Platt, Mrs J Malatesta and Miss S Fritz

Representation

Claimant: in person

Respondent: Mr Tidy, Solicitor

JUDGMENT

The Claimant's complaint of detriment on grounds of making a protected disclosure under section 47B of the Employment Rights Act 1996 is not well-founded and is dismissed.

The Claimant's claim for notice pay is not well-founded and is dismissed.

When the proceedings were begun the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is not just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the Respondent shall therefore pay the Claimant the gross sum of two weeks' pay: £627.24.

REASONS

Procedure

1. The Hearing took place as a CVP hearing.
2. The parties were unable to agree the bundle of documents. Two bundles were provided to the Tribunal. There had been significant disputes regarding disclosure and at a hearing on 5 July 2023 orders for specific disclosure had been made against the Respondent.
3. The Claimant's bundle contained everything that was in the Respondent's bundle and included a small number of additional documents, including the Records of recent Preliminary Hearings. The Tribunal decided to use the Claimant's bundle comprising 195 pages at the hearing.
4. The Tribunal was also referred to an Excel spreadsheet which was a transcript and translation from Punjabi to English of a video recording. This had been translated by Mr Summan of the Respondent and the Claimant objected to it on that basis.

The Tribunal took note of the Claimant's objections and informed the Respondent that if they wanted to rely on the transcript they would need to provide a neutral translation by a third party and noted that they could have chosen to do so prior to the hearing. The Respondent confirmed that it did not seek to rely on the transcript and therefore would not be providing a neutral translation.

5. The Tribunal asked the parties to confirm the key documents to which it should refer. The Claimant stated that key documents were referenced in his witness statement, in addition he referred the Tribunal to pages 176, 34 and 36. The Respondent stated that the key documents the Tribunal should refer to were: pages 88, 117, 108-110, 37 – 66 and the pleadings.
6. The Claimant provided a short video (of seven seconds duration) which the Tribunal watched.
7. The Tribunal heard evidence from the Claimant and from three witnesses for the Respondent: Mr Summan, Mr Hussein and Mr Ali. All witnesses provided written witness statements and were cross-examined. There were some difficulties taking evidence from two of the Respondent's witnesses because they did not have appropriate devices and were using their mobile devices to give evidence to the Tribunal.
8. Both parties made submissions to the Tribunal at the conclusion of the evidence. The Respondent made its submissions first. The Claimant was then given approximately one hour to consider his submissions noting that as a litigant in person he was unfamiliar with the Tribunal process.
9. The parties agreed at the outset of the hearing that the list of issues set out in the Record of Preliminary Hearing dated 5 April 2023 was an accurate summary of the matters to be determined by the Tribunal. It was accepted by the Respondent that the Claimant was a worker during his time with the Respondent. There were significant disputes of fact regarding the issuing of contractual documentation, whether the Claimant had made any qualifying protected disclosures and the events surrounding the termination of the Claimant's engagement.
10. The Tribunal was unfortunately unable to give its judgment at the conclusion of the hearing due to insufficient time. This was explained to the parties.

The Claimant's complaints

11. The Claimant's complaints as set out in the Record of Preliminary Hearing dated 5 April 2023 are as follows and these are the matters that were determined by the Tribunal:

1. Notice pay

1.1 What was the claimant's notice period? (the claimant claims one month's notice because he was paid per month);

1.2 Was the claimant paid for that notice period?

1.3 If not, was the claimant guilty of gross misconduct?

2. Protected disclosure

2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

- 2.1.1.1 *During the first week of August 2021 the claimant reported to the manager Ajit and to Ali that Waqar was not authorised to work on the site;*
- 2.1.1.2 *On or about 19 August 2021 the claimant informed Ajit and Ali that a co-worker had stolen from the site.*
- 2.1.2 *Did he disclose information?*
- 2.1.3 *Did he believe the disclosure of information was made in the public interest?*
- 2.1.4 *Was that belief reasonable?*
- 2.1.5 *Did he believe it tended to show that:*
 - 2.1.5.1 *a criminal offence had been, was being or was likely to be committed;*
 - 2.1.5.2 *a person had failed, was failing or was likely to fail to comply with any legal obligation; (the claimant relies upon the legal obligation for a person to have a licence from the Security Industry Authority).*
- 2.1.6 *Was that belief reasonable?*
- 2.2 *If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.*

3. Detriment (Employment Rights Act 1996 section 48)

3.1 *Did the respondent do the following things:*

- 3.1.1 *Ignored and failed to act on his concerns that a co-worker was working on a site in absence of a licence;*
- 3.1.2 *Altered the claimant's shifts without consultation from 5.30 p.m. to 9 a.m. to 9 p.m. to 12 p.m.*
- 3.1.3 *On or about 15 August 2021 removed the claimant from site and required him to work at Hilston Park Wales;*
- 3.1.4 *On or about 19 August 2021 falsely or wrongly accused the claimant of theft from Hilston Park;*
- 3.1.5 *Failed to believe the claimant that his co-worker committed the theft;*
- 3.1.6 *(Ali) informed the claimant not to inform the police about the theft.*
- 3.1.7 *Ajit failed to take the claimant's calls from about 20 August 2021;*
- 3.1.8 *On or about 7 September 2021 terminated the claimant's contract.*

3.2 *By doing so, did it subject the claimant to detriment?*

3.3 *If so, was it done on the ground that he made a protected disclosure?*

4. Schedule 5 Employment Act 2002

4.13 *When these proceedings were begun, was the respondent in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars?*

4.14 *If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.*

4.15 *Would it be just and equitable to award four weeks' pay?*

Findings of fact

- 12. The Claimant's engagement with the Respondent, a Security Company, started on 15 or 16 July 2021. He was engaged as a Security Guard at Gulston Gardens Student Accommodation in Coventry. His colleague, Mr W Ahmad, also worked at that site. The Claimant usually worked two shifts a week and could work extra shifts as and when he was needed. The Tribunal considered that the documentation at pages 117 and 118 of the Bundle indicated that the Claimant worked consistently similar shifts until 13 August 2021.
- 13. The Respondent's position is that the Claimant was provided with the documentation at pages 38 – 40, 48 – 50, 51, 56 – 61 and 63 – 66 of the Bundle

at the outset of his engagement. Mr Summan and the Claimant had met on 10 July 2021 in KFC where an informal interview was undertaken.

14. The Respondent's position is that the documents were sent within one or two weeks of that meeting and were signed and returned by the Claimant. They were not sent recorded delivery and no documentary evidence exists to show when they were sent. The Claimant's evidence is that he has never seen these documents until these proceedings and that his signature has been cut and pasted from a document he sent to the Tribunal in dated 12 February 2022 at page 185 of the Bundle). The Claimant's signature on these documents appears to be identical to that which appears on the document sent to the Tribunal. The Claimant gave two addresses to the Respondent and it is possible that documents could have been sent to the wrong address.
15. On balance the Tribunal finds that the Claimant was not provided with a statement of written particulars at the outset of his engagement with the Respondent. The Claimant's evidence was that because he was paid monthly he believed he was entitled to one month's notice or three months' notice based on the working-time opt out form at page 56 of the bundle. Neither of these assertions are relevant to the determination of what notice, if any, would be due to the Claimant on termination of the engagement.
16. The Tribunal finds on the balance on the balance of probabilities that a telephone conversation took place between the Claimant and Mr Summan on 1 August 2021 as alleged by the Claimant. However, the Tribunal is unable to conclude what was discussed during this conversation. The Claimant did not provide clear evidence about what he alleges took place during that conversation. He stated that he observed that Mr Ahmad did not include his name or signature when filing out the daily occurrence book (pages 131 – 137) and that he brought it to Mr Summan's attention. The Respondent's evidence was that the Claimant did not make disclosures about Mr Ahmad. The Tribunal was unable to understand from the Claimant's evidence what information he asserts he disclosed and whether he had a reasonable belief that disclosing it was in the public interest. He did not disclose any telephone logs of the call, it was not followed up in writing at any time and there was no evidence that he had followed it up verbally either.
17. The Tribunal finds on the balance of probabilities that a conversation took place between the Claimant and Mr Ali on 8 August 2021. Mr Ali is a Security Officer and does not undertake a supervisor role. The Tribunal is unable to conclude what was discussed during this conversation. The Claimant did not provide evidence sufficient to conclude that a disclosure of information in the public interest was made on this date. The Claimant did not provide a clear account of what he alleges took place and what he told Mr Ali and no documentation exists. The Claimant provided no evidence that he followed up the conversation verbally or in writing.
18. During 16 – 18 August 2021 the Claimant was asked to work at a site called Hilston Park in Wales. The Claimant was happy to accept this assignment as it meant he would be able to take 19 and 20 August 2021 off work for his son's birthday celebrations.
19. Mr Hussein was also assigned to this site although he arrived after the Claimant. The Claimant arrived on 16 August 2021 after a long drive from Derby. Mr Hussein arrived at approximately 12:43pm (see page 99 of the Bundle) when a text message indicates he was waiting at the gate to be let in.
20. On 18 August 2021 an incident took place. The parties do not agree about what happened during this incident. The Tribunal has had to reach conclusions about what did occur on this date on the basis of inadequate documentation and inconsistent witness evidence from both parties. It is alleged that the Claimant put

items belonging to the landlord of Hilston Park into his car without permission. Mr Hussein's evidence was that the Claimant had things in his car (including ironing boards, cleaning products and paintings), that he asked him what he was doing and that the Claimant told him not to worry about it. Mr Hussein's evidence was that the Claimant is a landlord himself and may have been taking items for that purpose. Mr Hussein thought it strange and decided to check with Mr Summan that it was authorised. We accept that Mr Hussein told Mr Summan over the phone about his concerns that the Claimant had items in his own vehicle. The Claimant's evidence was that the landlord was aware of it and that it was Mr Hussein who approached him with things to put in his car. The Tribunal does not accept the Claimant's account of events which it found difficult to comprehend. The Tribunal preferred Mr Hussein's evidence concerning the events on this date.

21. The Tribunal finds that on 18 August 2021 the Claimant left Hilston Park just before 6pm (having been hoping to leave around 4pm) before Mr Summan arrived. He had items in his car that belonged to the landlord of Hilston Park.
22. The Claimant's own evidence was that he later returned these items around 1am on the morning of 20 August 2021. He travelled back from Derby setting off at around 8.30pm and arriving after 12.30am. Page 89 shows a message where the Claimant is telling Mr Ali to open the gate. He did not do so.
23. On 19 August 2021 a conversation took place between the Claimant and Mr Summan where the Claimant was told he was dismissed because he was alleged to have taken items belonging to the landlord. The Claimant sent a video to Mr Summan at 16:02 and sent a text message around an hour later threatening that he would go to the Police (see page 84). The Tribunal was surprised by the content and tone of the message which did not seem reasonable in the circumstances. The Tribunal finds these messages were sent after the Claimant was informed of his dismissal by Mr Summan. Mr Summan stated that he believed what he had been told by Mr Hussein regarding the incident. The Tribunal accepts that Mr Summan
24. did hold a belief that the Claimant was responsible for the incident. However, Mr Summan did not conduct an adequate investigation and his incident report was lacking in a number of respects.
25. On 20 August 2021 the Claimant visited a local Police station and spoke to PC Grant who advised him to leave the items next door with a farmer referred to as Farmer Desmond (see page 91). The Claimant sought to contact Mr Summan numerous times after this and Mr Summan did not accept his calls eventually blocking him. The Claimant sent a text message on 23 August 2021 offering his assistance (page 104) and further messages regarding when he could expect to be paid. He called Mr Summan from a withheld number on 7 September 2021. Mr Summan accepted the call and told the Claimant he was no longer engaged and was instructed not to contact the company or Mr Summan again.
26. There was no evidence of the Claimant's dissatisfaction with anything prior to 18 August 2021. He did not raise a grievance or record any complaints in writing. The Tribunal do not find that the Claimant's hours were altered before the Claimant agreed to undertake the shifts at Hilston Park. The Tribunal finds that the Claimant was happy to undertake the shifts at Hilston Park because it enabled him to take 19 and 20 August 2021 off work for his son's birthday.
27. The Tribunal accepts that the Claimant was accused of theft on 19 August 2021. The investigation into this incident was inadequate and relied on one person's account of events. It was clear that Mr Summan's mind was made up and he believed Mr Hussein's account of events. Mr Summan did not believe Mr Hussein

was responsible for any wrongdoing. The Claimant's evidence was that he made the allegation against Mr Hussein after he had been accused by Mr Summan. He also said that he had already made the allegation to Mr Summan. The Claimant's evidence was inconsistent and we find that he accused Mr Hussein after being accused himself.

28. Mr Ali advised the Claimant not to go to the Police and his evidence was that it did not reflect well on the company or the Claimant. He felt he had given good advice. The Tribunal accept his evidence regarding his account of what he said to the Claimant. The Respondent terminated the Claimant's engagement because of the incident on 18 August 2021. We find that this was communicated to the Claimant before he returned the items in the early morning of 20 August 2021.
29. The Tribunal accepts the Claimant may not have been clear that his engagement had been terminated until he got in touch with Mr Summan on 7 September 2021 when he called from a withheld number. However, the Claimant did not present for work after the incidents during 18 – 20 August 2021. He states that it is because Mr Ali told him not to return until he was asked to do so.

Law

Protected disclosure detriment

30. Section 47B(1) of the Employment Rights Act 1996 sets out that:

“a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, on the ground that the worker has made a protected disclosure”.

31. In order for a disclosure to be “protected” various requirements have to be met pursuant to section 43B of the Employment Rights Act 1996
 - (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) *a criminal offence had been, was being or was likely to be committed;*
 - (b) *a person has failed, is failing or is likely to fail to comply with any legal obligation*
32. Further disclosure must be made to an appropriate person or body as set out in sections 43C-H.
33. In this case the Claimant relies on section 43B(1)(a) and (b) and alleges that the relevant disclosures were made to his employer under section 43C.
34. There is significant case law in relation to which disclosures qualify for protection.
35. An oral communication, provided that it conveys facts, is capable of being a disclosure of information, *Eiger Securities LLP v Korshunova 2017 ICR 561, EAT*. However, bringing a claim solely based on oral disclosure(s) does require a Claimant to satisfy the Tribunal on the balance of probabilities what was said. In *de Haney v Brent Mind and anor EAT 0054/03* it was found that the Claimant had failed to establish that a meeting had occurred as she described and therefore no qualifying disclosure had been made orally.
36. Tribunals must approach the question of whether there was a protected disclosure in a structured way. They must consider whether there has been a disclosure of information, not a bare allegation - *Cavendish Munro Professional Risks*

Management Ltd v Geduld (2010) ICR 325, although an allegation may accompany information. *Kilraine v L.B. Wandsworth(2018) EWCA Civ 1436* makes clear that the disclosure must have “sufficient factual content” to make it a disclosure of information and not just an allegation.

37. They must then consider whether the worker held a belief that the information tended to show a class of wrongdoing set out in section 43B (the subjective element), and whether that belief was held on reasonable grounds (the objective element) – which is not to say that belief in wrongdoing must have been correct, as a belief could be held on reasonable grounds but still be mistaken - *Babula v Waltham Forest College (2007) ICR 1026, CA*. Then the tribunal must assess whether the Claimant believed he was making the disclosure in the public interest, and finally, whether his belief that it was in the public interest was reasonable. The belief in wrongdoing or public interest need not be explicit. As was said by the EAT in *Bolton School v Evans*, “it would have been obvious to all but the concern was the private information, and sensitive information about pupils, could get into the wrong hands, and it was appreciated that this could give rise to potential legal liability”.
38. *Chesterton Global Ltd v Nurmohamed (2017) IRLR 837* confirms that a Claimant’s genuine belief in wrongdoing, the reasonableness of that belief, and his belief in public interest, is to be assessed as at the time he was making it. Public interest need not be the predominant reason for making it. Public interest can be something that is in the “wider interest” than that of the whistleblower - *Ibrahim v HCA International*. The whistleblower may have a different motive for making the disclosure, but the test is whether at the time he believed there was a wider interest in what he was saying. The Tribunal must consider whether the Claimant held a genuine belief that they were acting in the public interest and that belief must be a reasonable one. The Court of Appeal in *Chesterton Global Limited v Nurmohamed [2018] ICR 731* considered that a disclosure could be in the public interest even if the motivation was to advance the worker’s own interests, so long as the worker reasonably believed the disclosure was in the public interest as well as his own personal interest. The following factors will be relevant when considering the public interest test: the numbers in the group whose interests the disclosure served; the nature and extent of the interests affected; the nature of the wrongdoing; and the identity of the wrongdoer.
39. The question of what amounts to a detriment has also been the subject of case law. Detriment means being put at a disadvantage. The test of whether someone has been disadvantaged is set out in *Shamoon v Chief Constable of RUC (2003) UKHL 11*, and the test is whether a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment - *Jesudason v Alder Hay Children’s NHS Foundation Trust (2020) EWCA Civ 73*, but “An unjustified sense of grievance cannot amount to detriment” *Barclays Bank v Kapur no2 1995 IRLR 87*. The test of whether any detriment was “on the ground that” she had made protected disclosures is whether they were materially influenced by disclosures: *NHS Manchester v Fecitt (2012) ICR 372*. This is less stringent than the sole or principal reason required for claims about dismissal.
40. The Tribunal is required to make a careful evaluation of the Respondent’s reason or reasons for dismissing or subjecting the Claimant to other detriment. This is in essence a finding of fact, and inferences to be drawn from facts, as a reason is a

set of facts and beliefs known to the Respondent - *Abernethy v Mott, Hay and Anderson 1974 ICR 323 CA*, and *Kuzel v Roche Products Ltd (2008) IRLR 530, CA*.

41. In assessing reasons, tribunals must be careful to avoid “but for” causation: see for example the discussion in *Chief Constable of Manchester v Bailey (2017) EWCA Civ 425* (a victimisation claim), and *Ahmed v Amnesty International [2009] IRLR 884*. However, it is not necessary to show that the employer acted through conscious motivation – just that a protected disclosure was a ground for detriment—what caused the employer to act as he did - *Nagarajan v London Regional Transport (1999) ITLR 574*.

Statement of written particulars

42. Section 1 of the Employment Rights Act 1996 provides that an employer shall give written particulars to a worker at the beginning of an engagement. This is no longer dependent on an individual having employment status. This should include any terms regarding the notice the worker is required to give to terminate the contract or is entitled to receive.

Notice

43. Section 86 of the Employment Rights Act 1996 provides for statutory minimum periods of notice for employees. This provision does not apply to workers. There is no minimum statutory notice entitlement for workers. If an employee has been employed for less than one month there is no entitlement to notice. If an employee has been employed for more than one month but less than two years’, there is an entitlement to one week’s statutory notice. The question of what notice provisions apply to workers is a contractual matter.

Conclusions

Protected disclosure detriment section 47B complaint

44. In relation to the first disclosure: the Claimant did speak to Mr Summan on 1 August 2021. However, the Tribunal is unable to find that he disclosed information to Mr Summan tending to show that a criminal offence had been committed or that there was a failure to comply with a legal obligation. The Claimant did not provide clear evidence to the Tribunal about exactly what information he disclosed to Mr Summan. The matter is dealt with briefly in his evidence and he has not proved on the balance of probabilities that a disclosure of information was made. The Tribunal was unclear at the conclusion of evidence exactly what information the Claimant purported he had disclosed on 1 August 2021.
45. The Claimant did speak to Mr Ali on 8 August 2021. Mr Ali is not a supervisor and was a colleague of the Claimant, another Security Officer based at the Coventry site. He was not a qualifying person to whom it was appropriate to make a protected disclosure for the purposes of section 43C. Further the Claimant did not prove on the balance of probabilities that he had made a disclosure of information in the public interest tending to show that a legal obligation had been breached. The Tribunal was unclear at the conclusion of evidence exactly what information the Claimant purported he had disclosed on 8 August 2021.
46. In relation to the Second Disclosure, we find that the Claimant expressed his view to Mr Summan that Mr Hussein was guilty of the theft of items from Hilston Park in response to allegations made against him by Mr Summan. This was an allegation and applying *Cavendish Munro Professional Risks Management Ltd v Geduld*

(2010) ICR 325, and *Kilraine v L.B. Wandsworth* (2018) EWCA Civ 1436 did not amount to a disclosure of information.

47. If the Tribunal is wrong about this and it was a disclosure of information, we do not find that it was made in the public interest applying *Chesterton Global Ltd v Nurmohamed*. We do not find that the Claimant had a reasonable belief that he was acting in the public interest at the time. Rather the Tribunal's view is that the comment was made in the Claimant's own self-interest because he had been accused of wrongdoing by the Respondent. The Claimant did not demonstrate in his evidence that he reasonably believed he was raising a matter of public interest.
48. Even if the Claimant had been able to establish that he made a qualifying protected disclosure, the reason why the Claimant was dismissed was because Mr Summan had a genuine belief that the Claimant had stolen items from the premises and made the decision to terminate the Claimant's engagement after speaking with Mr Hussein and prior to his conversation with the Claimant. Any disclosure the Claimant made was not the reason for the termination of his engagement: Mr Summan's belief in his guilt was the reason for termination.
49. The Tribunal therefore concludes that the Claimant does not meet the requirements of section 47B of the Employment Rights Act 1996 and has not established that he made qualifying protected disclosures on 1, 8 and 19 August 2023.
50. The Claimant's complaint that he was subjected to a detriment for the purposes of section 47B of the Employment Rights Act 1996 is not well-founded and is dismissed.

Notice pay

51. The Tribunal finds that the Claimant was not provided with any documentation at the outset of his engagement with the Respondent. He was therefore not informed in writing of any provisions in relation to notice. There was no other relevant evidence about what was agreed. The Claimant held a mistaken view that because he was paid monthly he should have had a one-month notice period.
52. It was accepted by the parties that the Claimant was a worker. The Employment Rights Act 1996 does not provide a statutory minimum notice period for workers.
53. If nothing was explicitly agreed between the parties, then the default position is that the Claimant is not entitled to any notice on termination of his engagement.
54. The Claimant's claim for notice pay fails and is dismissed.

Written statement of particulars

55. When the proceedings were begun the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. He was not provided with written particulars during the short period of his engagement. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable.

Case No: 1305095/2021

56. It is not just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the Respondent shall therefore pay the Claimant the gross sum of two weeks' pay: £627.24.

Employment Judge Platt

Date 11 October 2023