EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101860/2023

Held at Inverness on 7 August 2023

Employment Judge N M Hosie

Mr R Munro	**Claimant** **In Person**
SGL Carbon Fibers Ltd	**Respondent** **Represented by** **Mr K Tudhope,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:-

1. the claimant is a disabled person, by virtue of his Autism, within the meaning of s.6 of the Equality Act 2010;

2. the claims are struck out in respect of a failure to comply with Tribunal Orders, in terms of Rule 37(1)(c) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013; and

3. the claims have no reasonable prospect of success and are struck out, in terms of Rule 37(1)(a) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure Regulations 2013.

REASONS

Introduction

1. The claimant, Mr Robbie Munro, sought to advance claims of disability discrimination and of so-called "automatic unfair dismissal" for making a protected disclosure (colloquially known as "whistleblowing").

2. The case called before me by way of a Preliminary Hearing to consider the following issues:-

- Whether the claimant was a disabled person, in terms of s.6 of the Equality Act 2010
- Whether the claims should be struck out as having "no reasonable prospect of success", in terms of Rule 37(1)(a) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) 2013 ("the Rules of Procedure")
- Whether the claims should be struck out for non-compliance with a Tribunal Order, in terms of Rule 37(1)(c)
- Whether the claims had "little reasonable prospect of success" and, if so, whether the claimant should be required to pay a deposit as a condition of continuing to advance his allegations, in terms of Rule 39

The evidence

3. I heard evidence from the claimant with regard to the issue of disability status. A Joint Inventory of documentary productions was also submitted ("P").

4. So far as the strike out application and the "prospects" of the claims succeeding were concerned, I heard submissions by and on behalf of the parties.

Disability status

Relevant statutory provision

5. S.6 of the 2010 Act is in the following terms:-

"***6. Disability***

(1) A person (P) has a disability if –

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

6. Helpfully, the respondent's solicitor advised at the outset that he accepted that the claimant had a "recognisable condition", namely "High Functioning Autism" (previously referred to as "Asperger's Syndrome") and that this "impairment" was "long-term", as it had lasted for at least twelve months (Schedule 1, paragraph 2 of the Act).

7. This meant that the only issues I was required to address were the effect of the claimant's admitted impairment on his ability to carry out "normal day-to-day activities" and whether that effect was "substantial".

The facts

8. Having heard the evidence, and considered the documentary productions, I was able to make the following findings in fact in relation to the issue of disability status.

9. Mr Munro gave his evidence, in this regard, in a measured, consistent and convincing manner and presented as credible and reliable.

10. When giving evidence, he spoke to his response to a Tribunal Order which required him to answer questions in relation to his alleged disability (P.305/306). However, I did not find this of great assistance, particularly the "Impact Statement", as he made specific allegations concerning his work for the respondent which, for the present purposes, was not an issue with which I was concerned.

11. I accepted, however, on the basis of the claimant's evidence and the supporting medical reports that he has, "deficits in communication skills, emotional recognition and is not good at empathisation with others". He does not currently take any medication for his condition.

12. He also spoke to a medical report, dated 13 March 2020, from Dr. Helen Crawford, Clinical Psychologist and Ulla Bowie, Speech and Language Therapist (P.294-303), which I did find to be of assistance.

13. He experiences difficulties with social interaction, can often take what others say quite literally and often does not appreciate the nuances of language and jokes. However, he has developed what he described as "masking", which I understood to mean coping mechanisms. For example, although he may not understand a joke, if others laugh he will laugh as well.

14. He requires detailed instructions when required to do something new or to go somewhere new. If he is not given clear instructions about a task he becomes very anxious and stressed.

15. When giving evidence, he referred to the following example of a disabled person which is given in the "Guidance on matters to be taken into account in determining questions relating to the definition of disability (2013)" ("the Guidance") (P.336):

"*A six-year-old child has been diagnosed as having autism. He has difficulty communicating through speech and in recognising when someone is happy or sad. When going somewhere new or taking a different route he can become very anxious.*"

16. The claimant said that was how he was affected. I accepted his evidence in this regard.

17. The claimant does not drive as he, "*finds all the information when driving overwhelming*". By that, he meant having to take account of such things as the speed limit (he is unable to understand why someone would even contemplate breaking the speed limit); road signs, traffic lights and even the noise of the engine can prove overwhelming for him.

18. He also has an excessive attention to detail and his e-mail correspondence, particularly with someone he does not know, can be "elongated".

19. The respondent's solicitor submitted that the claimant had failed to establish what his impairment was and that all it amounted to was a lack of empathy.

20. I did not find favour with this submission. While described as "high functioning", the effect of his Autism, which I have detailed above, was much greater than just a "lack of empathy".

Was the effect "substantial"?

21. The other issue which I had to address, with reference to the s.6 definition, was whether the effect of the claimant's impairment was "substantial".

22. "Substantial" means "more than minor or trivial" (s.212(1) of the Act). The Guidance explains that the requirement for any adverse effects of an impairment on day-to-day activities to be "substantial" reflects, "the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people".

23. I had no difficulty deciding, in light of this definition and the Guidance, that the claimant's ability to carry out normal day-to-day activities was indeed "substantial".

24. I arrived at the view, therefore, that the claimant was a disabled person in terms of s.6 of the Act.

25. While it was clear the claimant had developed coping mechanisms and that he was able to function in a normal manner when doing many things and had been able to secure employment doing a variety of jobs over the years, I was mindful that the EAT had commented in ***Goodwin v. Patent Office*** [1999] IRLR 4, to which I was referred by the respondent's solicitor, that it was important to remember that the focus required (at that time by the Disability Discrimination Act 1995 but equally applicable to the 2010 Act) is on the things that the claimant cannot do or can only do with difficulty, rather than on the things that the person can do.

26. Finally, having split the statutory definition of disability into its various components, I then looked at the picture as a whole as the EAT in ***Goodwin*** said I should do and this confirmed my view that the claimant was disabled within the meaning of the Equality Act 2010.

Disability discrimination claim

27. In his claim form the claimant apparently intimated a complaint of a failure to make reasonable adjustments (P.7). He averred that he, "*had not been provided with essential training as laid out in my job offer*" and went on to make the following averments:-

"*I suffer with High Functioning Autism (previously known as Asperger's Syndrome) with which the Company were aware but did not either ask for a medical report from my doctor nor refer me to an Occupational Health Specialist. The Company did not carry out an assessment of my work place to assess any adjustments not* (sic) *whether there should be any specialist training.*"

28. However, in his Agenda for the case management Preliminary Hearing he intimated complaints of indirect discrimination, harassment, discrimination arising from disability and a failure to make reasonable adjustments (P.31).

29. I conducted the case management Preliminary Hearing on 26 April 2023. The claimant had provided additional information about his discrimination complaints in Schedule 1 of the Agenda but the basis for his complaints remained confused and unclear and he had provided no details of the alleged harassment (P.35-38). Having explained to the claimant what was required (P. 52/53, paras 5 and 6), I included Orders in the Note (P.51-56) which I issued following that Hearing, directing him to provide "Further and Better Particulars of the complaints comprising the claim" (P.53-55).

30. The Notes which accompanied my Orders contained the following warning (P.55): *"3. If any of these Orders is not complied with, the Tribunal may strike pout the whole or part of the claim or response under Rule 37"*.

31. The claimant responded on 11 May 2023 and at the same time provided answers to a Question and Answer Order which I had issued in relation to the issue of disability status (P.304-306).

32. By e-mail on 4 May 2023, the respondent's solicitor requested clarification of his complaints (P.64/65). The claimant responded later that day by e-mail (P.64).

33. On 12 May, the respondent's solicitor sent an e-mail to the claimant seeking further clarification and referring him to the "precise direction of the Tribunal" with regard to providing Further and Better Particulars of his complaints comprising the claims (P.68). The claimant replied by e-mail on 24 May 2023 (P.73/74). He said this "in conclusion": "*The claimant suffered disability discrimination as the respondent would not train or make reasonable adjustments to training to train an autistic trainee.*"

34. On 14 June, the respondent's solicitor submitted an "Application for Strike-Out which failing a Deposit Order" (P.75-87).

35. As it appeared to me that the respondent's solicitor had at least a stateable argument, I decided, having regard to the "overriding objective" in the Rules of Procedure, to fix a Preliminary Hearing.

Strike Out in terms of Rule 37(1)(c): Failure to comply with Tribunal Orders

36. I was mindful that the claimant is a litigant in person and I carefully considered the guidance for considering claims by litigants in person which was detailed by the EAT in ***Cox v. Adecco & Others*** UKEAT/0339/19/AT (at paras. 24-27 inclusive), to which I was referred.

37. I was also mindful that strike out is considered to be a "Draconian step" which should only be taken in the clearest of cases (***Michkarov v. Citibank N.A.*** [2016] ICR 1121, for example).

38. However, it was clear that the claimant was well able to articulate his complaints. He had corresponded with the Tribunal and the respondent's solicitor at some considerable length.

39. In ***Cox*** at paragraph 28 some "general propositions" were detailed. I was mindful of these. However, the claimant had been afforded ample time, at his own leisure while not under any stress, to explain his claims. It was also significant that at the case management Preliminary Hearing on 20 April 2023 I explained to the claimant, in the clearest possible terms, what he was required to do when complying with my Orders to provide Further and Better Particulars of his complaints comprising his claims. I also issued a Note after the Hearing with clear Directions (P.52-55 in particular).

40. Despite this, the claimant has failed to comply, in any meaningful way, with my Directions and Orders.

41. In deciding to strike out a claim for non-compliance with an Order under Rule 37(1)(c) I was required to have regard to the "overriding objective" in Rule 2 of the Tribunal Rules of Procedure of seeking to deal with cases fairly and justly. This requires a Tribunal to consider all relevant factors. In ***Weir Valves and Controls (UK) Ltd v. Armitage*** [2004] ICR 371, to which I was also referred, the EAT said that, the following factors, in particular, should be considered.

"**The magnitude of the non-compliance.**"

42. In my view, this was significant. There was a complete failure to provide the Further and Better Particulars of the complaints comprising the disability

discrimination claim, in accordance with my clear Directions, despite the claimant being afforded every opportunity to do so.

"**Whether the default was the responsibility of the party or his or her representative**"

43. There was no doubt that the default was the sole responsibility of the claimant.

"**What disruption, unfairness or prejudice has been caused**"

44. The case has been unreasonably prolonged with no progress having been made to formulate the claimant's written pleadings in an acceptable form by providing "fair notice" of the complaints he wishes to advance and the legal and factual bases for them. As a consequence, the respondent has incurred, to its prejudice, unnecessary costs, will little prospect of being able to recover these from the claimant who remains unemployed and is in receipt of benefits.

"Whether a fair hearing would still be possible"

45. It would not be possible to have a Final Hearing based on the current state of the claimant's pleadings, as there is not fair notice of the discrimination complaints being advanced. I did consider whether the claimant should be afforded a further opportunity, of providing proper specification of his claim. However, in my view, there is little prospect, if any at all, of him being able to do so, judging by the history of the case to date. Further, were I to afford the claimant such an opportunity this would involve further delay, further correspondence and adjustment of the pleadings, with the possibility of a further Preliminary Hearing and this would involve the respondent in even more expense.

"Whether striking out or some lesser remedy would be an appropriate response to the disobedience"

46. I have dealt with this above in relation to the issue of whether a fair hearing would still be possible. The only other option would be to afford the claimant a further opportunity to amend his pleadings, with attendant delay and expense and little prospect of the requisite specification being provided.

Proportionality

47. I am also required to consider whether a strike out, on the ground of non-compliance with Tribunal Orders and Direction is a proportionate response to the non-compliance. I am in no doubt that, in all the circumstances, it is.

48. For all these reasons, therefore the discrimination claim is struck out for non-compliance with Tribunal Orders, in terms of Rule 37(1)(c).

Strike out in terms of Rule 37(1)(a): Claim has no reasonable prospect of success

49. The claimant asserted at the Hearing that he had been dismissed and that his dismissal was the basis for his discrimination complaint(s). He had not articulated, clearly, the nature of any such complaint(s), but I took this to mean that his alleged dismissal would be the "less favourable treatment", the "the unfavourable treatment", or the "substantial disadvantage", he would be alleging, had he done so. In short, his discrimination claim was predicated on his dismissal.

50. When considering this issue, I remained mindful of the "Draconian nature" of strike out. I was also mindful, not only that the claimant was a litigant in person, but also of what Lord Steyn said in ***Anyanwu v. Southbank***

Students' Union & Others [2001] ICR 391, HL, that as discrimination cases tend to be "*fact sensitive"* strike outs should only be ordered, "*in the most obvious and clearest cases*". Lord Hope also said in that case that, "*discrimination issues should as a general rule be decided only after hearing the evidence*".

51. For the purposes of addressing the "prospects" issue, I took the claimant's pleadings at their highest value. In other words, I accepted that he would be able to prove the facts he alleges.

52. Having done so, not only could I not identify the discrimination complaints being advanced and the legal and factual bases for them (as I had ordered), but also I was unable to find any averments which, if proved, would establish a connection between the ending of his employment (using that term in a neutral sense) and his disability. The claimant failed to explain why his disability was relevant to his alleged dismissal.

53. While lacking the required specification, the only possible discrimination complaint which I could discern from the claimant's pleadings was an alleged failure to make reasonable adjustments. The claimant averred in his claim form that the respondent, "*did not either ask for a medical report from my doctor nor refer me to an Occupational Health Specialist. The Company did not carry out an assessment of my work place to assess any adjustments not* (sic) *whether there should be any specialist training.*" (P.7).

54. However, even if such a claim had been properly articulated, as the respondent's solicitor submitted with reference, to:-***Tarbuck v. Sainsbury Supermarkets Ltd*** [2006] IRLR 664, EAT; ***Latif v. Project Management Institute*** [2007] IRLR 579, EAT and ***HM Prison Service v. Johnson*** [2007] IRLR 951, EAT, there is no stand-alone duty to consider reasonable adjustments.

55. Although perhaps it would be wise for an employer to do so, failure to consult with an employee concerning reasonable adjustments is not of itself a breach of the duty. However, and in any event, a complaint of a failure to make reasonable adjustments had not been properly specified.

56. In the Note which I issued following the case management Preliminary Hearing on 26 April 2023 (P.51-56), not only did I issue specific Orders requiring the claimant to provide Further and Better Particulars of his disability discrimination complaints, within 14 days (P.54/55), I stressed the importance of explaining why he alleged that his treatment occurred, **"because of his disability"** (P.55), I also gave him guidance as to how these particulars required to be framed. I said this in my Note (P.53):-

"***Further and Better Particulars of the claimant's complaints comprising the claim***

I explained to the claimant the requirement, on every claimant in an Employment Tribunal case, to provide the respondent with "fair notice" of the complaints which he or she wishes to bring, by way of so-called Further and Better Particulars and that I would issue Orders to that effect. I refer the claimant to the case of ***C v. D*** [2020] UKEAT/0132/19 *which can be found on the internet. The case explains the purpose of "pleadings" (the parties' written cases) and gives guidance on the way in which these pleadings should be framed. So far as his disability discrimination complaint(s) is concerned, he is required to identify the section in the 2010 Act relied upon and to establish the "link" between the alleged treatment and his disability. In this regard, I refer the claimant not only to the 2010 Act, but also the EHRC Code of Practice on Employment (2011) which can also be found on the internet.*"

57. In the Order I also directed him to set out the, *"written further particulars", " as concisely as possible, under separate headings, with reference to the section(s) in the 2010 Act and the facts relied upon …"* (P. 54, para 2).

58. Despite this clear guidance, the claimant failed to provide fair notice, by way of proper specification, of his discrimination complaints and in the manner I had ordered.

59. Further, while I was required to afford the claimant a certain amount of leeway, as a litigant in person, I was also mindful that the Honourable Mr Justice Langstaff said this in ***Chandhok v. Tirkey*** UKEAT/0190/14/KN at para. 16:-

"*The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only useful but unnecessary functions. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claim as made – meaning, under the Rules of Procedure 2013, the claim as set out in ET1.*"

Dismissal or resignation ?

60. The claimant's discrimination complaints (such as they were) were predicated on his alleged dismissal, whereas the respondent's position was that he had resigned. While the case law cautions against deciding on strike out where there are disputed facts and while I decided to strike out the discrimination claim, in any event, as having no reasonable prospect of success, I felt that I was in a position to at least express a view on the likelihood of the claimant establishing that he had been dismissed, as the e-mail correspondence and the events which followed the claimant's alleged resignation and the contractual position between the parties were not disputed.

61. The claimant commenced his employment with the respondent on 5 October 2022. He was placed on an initial six-month contract which was terminable by either party on seven days' notice (P.99-106).

62. On 2 November 2022, the claimant sent an e-mail to the respondent's Laura Dobinson (an HR employee), in relation to his ongoing employment and training with the Company; he also requested a pay increase (P.118/119). The final paragraph of his e-mail was in the following terms:- "*It's with a heavy heart and without flame/retardant trousers, I would like to make my last day the 8 December 2023.*"

63. As the respondent was confused, understandably, by the reference to "2023", on 3 November 2022 the respondent's Senior HR Manager, Rikki Keanie, sent an e-mail to the claimant in the following terms (P.118):-

"*My colleague Laura has kindly passed on your e-mail below.*

With regards to your resignation from the temporary position of Process Operator, can you confirm whether you meant 8 December 2022 and not 2023?"

64. The claimant did not respond to that e-mail. He claimed at the Hearing that the e-mail had gone into his "spam" and he had not read it.

65. Understandably, the respondent wished to clarify the position concerning the date of the claimant's resignation and they arranged to meet with the claimant on 15 November 2022. There was included with the documentary productions Notes of that meeting under the heading "Exit Interview" (P.122-124).

66. However, notwithstanding the terms of these Notes, which, on the face of it, reveal that the meeting was conducted on the basis that the claimant had resigned (which did not appear to have been disputed), the claimant submitted at the Tribunal Hearing that he was not advised that the meeting was an "Exit Interview" and claimed that he had not resigned but had been dismissed. He also drew my attention to the fact that his e-mail of 2 November was headed "Training" (P.118). He also said that the reference in his e-mail to "8th December 2023" was because he would be, *"booking holidays after that",* but I did not understand the relevance of that "explanation".

67. On 16 November 2022, Mr Keanie sent a letter to the claimant under the heading "Acceptance of Resignation" (P.127).

68. However, on receipt of that letter the claimant sent an e-mail on 17 November to the respondent in which he maintained that his e-mail of 2 November 2022 had only been about training; and that he had not resigned (P.128-131).

69. Mr Keanie replied by e-mail on 18 November as follows (P.128):-

"*I am responding to your e-mail of 17 November. I regret that we cannot accept the interpretation you now seek to put on your e-mail of 2 November. The e-mail confirmed your resignation. You confirmed this in the subsequent meeting on 15 November with Gavin Roger and I, all as set out in my letter of 16 November.*

We have considered all of the concerns you have raised after your resignation. We find no basis for your claims of constructive dismissal, breach of contract or direct discrimination.

Given your decision to move on and the fact we do not accept your narrative of events we do not propose to enter into any further correspondence in this matter."

70. Relying only on the undisputed e-mail correspondence and the claimant's assertion that he had not resigned, I am of the view, giving the words "*I would like to make my last day"* (P. 119) their ordinary meaning, that it was reasonable for the respondent to take the view that the claimant had intimated his resignation in his e-mail of 2 November and for them to seek clarification of the date.

71. Notwithstanding the "fact sensitive" nature of discrimination claims and the requirement to take the claimant's case at its highest, in ***Ahir v. British Airways Plc*** [2017] EWCA Civ1392, the Court of Appeal asserted that Tribunals should not be deterred from striking out even discrimination claims that involved disputes of fact if they are entirely satisfied that there is no reasonable prospect of the facts necessary to find liability being established,

provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been explored.

72. I also found support for this approach in the recent case, ***Kaul v. Ministry of Justice and Ors*** [2023] EAT 41, in which the EAT said that the need for caution when considering a strike out application does not prohibit a realistic assessment of the prospects of the claim succeeding, where the circumstances of the case permit. This case involved ordinary, undisputed events regarding the handling of the claimant's grievances. Taking those facts at face value, the decision that the claims would inevitably fail and had no reasonable prospect of success was permissible.

73. In his Judgment in ***Ahir***, Underhill LJ considered that the, *"inherent implausibility of the claimant's case was something the Tribunal could properly take into account in deciding whether to strike-out the claim*".

74. In my view, that was the position in the present case. On a normal reading of the claimant's e-mail of 2 November (P118/119), particularly the reference to *"my last day*", it was reasonable for the respondent to take the view he had resigned; and the respondent's conduct thereafter, having regard to the undisputed documents, was entirely consistent with them having taken that view and not having decided to dismiss the claimant. Nor, as the respondent's solicitor submitted, had the claimant *"provided a coherent alternative account of how he maintains his employment ended despite having been directed by the Tribunal to do so"* (P.53, para 5).

75. I concluded, therefore, that the claimant's contention that he did not resign and was dismissed was *"inherently implausible"* and this meant that his discrimination claim was bound to fail.

76. However, my view on the likelihood of the claimant being able to establish that he was dismissed and that his case was bound to fail, was but one factor, and not an essential one at that, in my decision to strike out the discrimination

claim. I would have struck out the discrimination claim, in any event, for the other reasons given, even had I not been of this view. My view only served to reinforce my decision that the discrimination claim has no reasonable prospect of success.

77. For all these reasons, therefore, I arrived at the view that the discrimination claim has no reasonable prospect of success and that it should be struck out, in terms of Rule 37(1)(a) in the Tribunal Rules of Procedure.

Automatic Unfair Dismissal

78. S.103A of the Employment Rights Act 1996 renders the dismissal of an employee automatically unfair where the reason, or principal reason, for the dismissal, is that he or she made a "protected disclosure". I understood this to be the other claim being advanced by the claimant.

Strike out in terms of Rule 37 (1) (c): Failure to comply with Tribunal Orders

79. In the Note which I issued following the case management Preliminary Hearing on 26 April 2023, I issued an Order requiring the claimant to provide Further and Better Particulars of his "automatic unfair dismissal complaint, within 14 days". The Order was in clear unambiguous terms (P.53/54).

80. The "Notes" which accompanied the Order contained the following provision (P.55):- "*If any of these Orders is not complied with, the Tribunal may strike-out the whole or part of the claim or response under Rule 37.*"

81. In his responses the claimant singularly failed to comply with my Order (P.304-306 and P.73/74). In particular, he failed to provide the specific information ordered; he failed to identify the protected disclosure he was relying upon; he failed to identify the detriment to which he alleged he was

subjected; he failed to explain why any detriment to which he was subjected was "because of" any protected disclosure.

82. My reasons for striking out the disability discrimination claim for a failure to comply with my Order and the relevant case law such as ***Weir Valves***, were, for the most part, equally apposite to this claim.

83. I arrived at the view, therefore, and I am bound to say without a great deal of difficulty, that the claimant had failed to comply with my Order and that his automatic unfair dismissal claim should be struck out in terms of Rule 37(1)(c).

84. Finally, in this regard, I might add that, as I had done when deciding to strike out the disability discrimination claim, for the same reason, in arriving at this decision I remained mindful of the "Draconian nature" of strike-out, the "high bar" established by the relevant case law and the fact that the claimant was a litigant in person. However, I also had to have regard to the "overriding objective" in the Rules of Procedure and I was satisfied that strike out, in all the circumstances, was proportionate.

Strike out in terms of Rule 37(1)(a): Claim has no reasonable prospect of success

85. S.103A of the 1996 Act is in the following terms:-

"***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".

86. The alleged "protected disclosure" which the claimant was relying upon remained unclear until the Hearing when he advised that it was his e-mail of 2 November 2022 to the respondent (P.118/119).

87. However, he failed to comply with my Order by identifying the "types of information" in s.43B(1) he was relying upon (P.54).

88. In any event, I am not persuaded, with reference to such cases as ***Martin v. London Borough of Southwark & Another*** UKEAT/0239/20/JOJ, that the terms of his e-mail satisfy the meaning of a "disclosure qualifying for protection", in terms of s.43B.

89. The tenor of his e-mail appears to be no more than that of an employee making suggestions to his employer, in a convivial, friendly, manner, from his personal experience, of how its training might be improved, along with a request for more pay, rather than an allegation of wrongdoing. He also claims that he has "*learned all I need to in the input area*".

90. For these reasons alone, the automatic unfair dismissal claim has no reasonable prospect of success.

Causation

91. However, even if I am in error, the claimant had also failed to explain what I emphasised he was required to provide : "*the facts the claimant offers to prove that show or tend to show that the alleged detriment was* ***because of the making of the disclosure****"* (P.54).

92. He has failed to allege causation: the link between his alleged dismissal and the making of his alleged protected disclosure.

93. Further, for the claimant to succeed with this claim he will require to establish first of all that he was dismissed, before then establishing that his dismissal was because he had made a protected disclosure. As I have already explained there appears to be strong evidence to support the respondent's position that he was not dismissed but that he resigned.

94. For all these reasons, therefore, I arrived at the view that the automatic unfair dismissal claim also has no reasonable prospect of success and that it should be struck out in terms of Rule 37(1)(a) in the Rules of Procedure.

Conclusion

95. I had arrived at the view overall that, by and large, the submissions by the respondent's solicitor, in relation to strike out, on both grounds, in respect of both claims, were well-founded. I was also satisfied that my decision was in accordance with the "Overriding Objective", in Schedule 1, Rule 2 in the Rules of Procedure, to deal with cases, "fairly and justly".

Employment Judge: N M Hosie
Date of Judgement: 14 August 2023
Date sent to Parties: 14 August 2023