



EMPLOYMENT TRIBUNALS

Claimant: Mr M I Khan

Respondent: (1) Doncaster Mosque Trust
(2) Mohammed Afzal
(3) Seyed Tahir Ali Shah
(4) Mohammed (Mohammad) Sabir
(5) Mohammed Jalaluddin (Jalal) Khan

Heard: in Sheffield

On: 10 October 2023

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: Ms S Watson, counsel

Respondents: Mr J Munro, litigation consultant

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The claimant made protected disclosures falling within section 43A of the Employment Rights Act 1996 on 29 October 2021, 11 February 2022, 18 April 2022 and 21 July 2022.

REASONS

Background

1. The background to this claim is set out in the Record of the Preliminary Hearing on 10 May 2023 and I do not propose to repeat it here.
2. Today's Preliminary Hearing was listed to decide whether the claimant made protected disclosures falling within section 43A of the Employment Rights Act 1996 on the following occasions:
 1. On 29 October 2021 in a conversation with Mr Faruk when the claimant says that he told Mr Faruk that the First Respondent's trustees had a duty to keep proper financial records and to properly account for all funds received and were failing to do so;
 2. On 11 February 2022 in a conversation with Mr Ali when the claimant alleges that he said that cash donations were not being logged;
 3. On 18 April 2022 when the claimant alleges that he raised the above financial issues verbally with the Second and Fourth Respondents and Mr Ali; and
 4. On 21 July 2022 when the claimant asserts that he raised concerns with the First Respondent's trustees verbally about unpaid utility bills and late charges and that money from the public had not been properly accounted for and was missing.

The hearing

3. There was an agreed bundle of documents running to 138 pages. Ms Watson produced a written skeleton argument, for which I am grateful.
4. I heard evidence from the claimant. A witness statement was also produced for a Mohammad Zubair Samadi, a regular attendee and volunteer at the First Respondent. Mr Samadi was not however present when any of the alleged protected disclosures were made and could not give evidence relevant to the issues for determination today. He did not, therefore, give evidence.
5. The respondents chose not to adduce any witness evidence. I was told that witness statements had been prepared but that the witnesses would not be giving evidence. I was not provided with, and have not seen, copies of the respondents' witness statements.

The issues

6. The issues that fell to be determined at today's hearing were identified at the Preliminary Hearing on 10 May as being the following:
 1. On one or more of the four occasions identified at paragraph 2 above, did the

claimant disclose information?

2. Did he believe the disclosure of information was made in the public interest?
 3. Was that belief reasonable?
 4. Did the claimant believe that it tended to show that:
 - i. A criminal offence had been, was being or was likely to be committed; and/or
 - ii. A person had failed, was failing or was likely to fail to comply with any legal obligation?
 5. Was that belief reasonable?
7. In the witness statement that he had prepared for today's hearing the claimant also referred to a disclosure on 21 September. He confirmed that this was included for context only, and that he was not seeking to amend his claim to rely upon a fifth alleged protected disclosure.

Findings of fact

8. The claimant was employed by the First Respondent as an Imam and teacher. The First Respondent is a charitable trust.
9. As part of his role the claimant regularly received donations from members of the public who attended and worshipped at the Mosque. Every week before Friday prayers, there would be a collection and worshippers would be asked to make a financial donation to the Mosque. Approximately £900 to £1,300 would be collected each Friday.
10. The claimant would pass any donations that he received, including fees that parents paid him for teaching their children, to Mr Faruk who was the First Respondent's cashier. The claimant's practice was to record the amount of money received in receipt books. When he handed the money over to Mr Faruk he would ask Mr Faruk to sign and date the book confirming the amount handed over, so that there was a record of it.
11. On Friday 29 October 2021, after he had signed the receipt book recording monies given to him by the claimant, Mr Faruk made a comment in Urdu to Mr Imran to the effect of 'He's logging down every amount, we don't really need to do all this'. In response, the claimant said that the Trustees had a duty to keep proper financial records and to properly account for all of the money that they received. He also said that the Trustees were failing to do this because they were not logging everything and there were no records being kept of monies received, except from the records kept by the claimant. He told Mr Faruk that he should be logging everything.

12. At the time the claimant said this, he believed that the trustees of the First Respondent had a duty under the Charities Act 1993 to keep accounting records and to file those records, and that they were not doing that. He also believed that what he was saying was in the public interest because the donations came from members of the public. He was concerned that rumours were circulating that Mr Faruk was pocketing some of the donations and not banking all of them.
13. In February 2022 a new Imam was appointed at the Mosque, Mr Ali. Mr Ali was given responsibility for conducting Friday prayers, instead of the claimant. Mr Ali used Friday prayers to appeal for extra donations to renovate the building next to the Mosque, which the respondents wished to use as a community centre, but which needed work doing on it.
14. On 11 February 2022, having noticed that donations that were given to Mr Ali were not being logged, the claimant told Mr Ali that he was not logging cash donations, and that all cash donations had to be logged as it was a public duty to do so. He reminded him that he should make sure he kept logs of all the donations since he had announced that he was now in charge of donations.
15. The claimant believed, at the time of that conversation, that the respondents were in breach of their obligation to keep and file proper accounting records. He also believed that what he was saying was in the public interest because it related to monies donated by the congregation.
16. On 10 March 2022 members of the congregation were told that £35,000 had been raised through donations, following the call for donations to renovate the building next to the Mosque, and that they now wanted to raise another £80,000. At some point another call for donations was made, this time in relation to a house for the Imam to live in.
17. Members of the congregation approached the claimant and asked him what had happened to the money that had already been raised and why another appeal was being made for more money. They expressed concerns that the £35,000 had not been used for the purpose they had been told it would be used, and wanted to know where the donations were going.
18. On 18 April 2022, during the holy month of Ramadan, a meeting took place at the Mosque at which Mohammed Sabir, Mohammed Afzal, Mr Ali and the claimant were present. The claimant told the others that people had been asking him about the extra donation appeals that were taking place and asking what had happened to the funds already raised, and why another appeal was being made for more funds.
19. The claimant said that the public were asking why they were starting a new project (the house) when the previous project (renovating the building next to the Mosque) had not been completed, and wanted to know where the donations were going. He also said that the congregation was concerned that the trustees had not used the £35,000 raised for the purpose they said they would.

20. The claimant believed, at the time of this conversation, that he was telling the trustees that they had collected cash donations for a specific purpose but not used them for that purpose and had not accounted for the funds, which he believed was in breach of their obligations under the Charities Act 1993. He also believed that what he was saying was in the public interest, because it concerned donations from members of the public and members of the local community.
21. On 21 July 2022 during a meeting at which the claimant, Mr Sabir, Mr Faruk, Mr Afzal, Mr Ali and Mr Kaleemullah were present, Mr Sabir raised the issue of unpaid bills. Mr Sabir waved an envelope which he said contained unpaid bills, and which he said had been hidden by the previous management of the First Respondent (who had recruited the claimant) in the building next door. Mr Sabir told the claimant that 'these are unpaid utility bills' and that there were late payment charges, meaning that £6,000 was now owing.
22. The claimant said that 'this is wrong' because they would have to pay the bills using public money from donations, and that it would cost more due to the failure to pay on time. The claimant also said that the loss occurred was because the trustees had failed to deal with the Mosque's finances properly and that it was a waste of public money.
23. At the time he made these disclosures the claimant believed that they showed the trustees of the First Respondent had not complied with their duty under the Charities Act 1993 to properly account for the funds received, and that they were not keeping accounting records. The claimant also believed that what he was saying was in the public interest as the public had a right to know that the trustees were misusing their money.

The Law

24. The relevant statutory provisions are sections 43A, 43B and 43C of the Employment Rights Act 1996 which provide as follows:

"43A Meaning of "protected disclosure"

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H

43B Disclosures qualifying for protection

(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) that a criminal offence has been committed, is being committed or is likely to be committed,

- (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, or is likely to be deliberately concealed.*
- (2) For the purposes of subsection (1) it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*
- (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*
- (4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.*
- (5) In this part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).*

43C Disclosure to employer or other responsible person

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –*
- (2) (a) to his employer...”*
25. In **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325**, the EAT held that the ordinary meaning of giving information is ‘conveying facts’, which is distinct from the mere making of an allegation. The Court of Appeal has however subsequently held that ‘information’ can potentially include statements which might also be categorised as allegations (**Kilraine v London Borough of Wandsworth [2018] ICR 1850**). The statement must however have sufficient factual content that it tends to show one of the matters listed in section 43B(a) to (f).
26. The EAT has more recently held that the communication of an expression of opinion can potentially amount to a disclosure of information (**McDermott v Sellafeld Ltd and ors 2023 EAT 60**).

27. A disclosure does not have to be in writing to fall within section 43B of the ERA. Oral communications which convey facts and which meet the other requirements of the section may be covered (***Eiger Securities LLP v Korshunova [2017] ICR 561***).
28. In order for a disclosure to be a qualifying disclosure, the employee must reasonably believe that it tends to show one of the relevant matters. He must also reasonably believe that the disclosure is in the public interest.
29. The test for 'reasonable belief' is both objective and subjective. The Tribunal must focus on what the claimant believed (rather than what a hypothetical reasonable worker may believe) but there must also be some objective basis for the claimant's belief (***Korashi v Abertawe Bro Morgannwy University Local Health Board [2012] IRLR 4***). In ***Phoenix House Ltd v Stockman [2017] ICR 84***, the EAT, endorsing the approach taken in ***Korashi***, held that, on the facts that the claimant believed to exist, a judgment must be made firstly as to whether the belief was reasonable and secondly whether looking at matters objectively, there was a reasonable belief that the facts tend to show one of the relevant matters.
30. The leading case when considering the question of public interest is ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731***. In that case the Court of Appeal held that when considering whether a disclosure is in the public interest, factors that may be relevant include:
1. The number of people whose interests the disclosure served;
 2. The nature of the interests affected and the extent to which they are affected by the wrongdoing that is being disclosed;
 3. The nature of the wrongdoing disclosed; and
 4. The identity of the alleged wrongdoer.

Conclusions

31. I am satisfied on balance, on the evidence before me, that on each occasion the claimant says he made an alleged disclosure he went further than merely making allegations, and also conveyed facts:
1. On 29 October the claimant conveyed that the respondents were not logging or keeping proper records of cash donations received and that they had a duty to do so.
 2. On 11 February the claimant conveyed that cash donations were not being logged, and that there was a public duty to log them.
 3. On 18 April the claimant conveyed that people had been asking him about the extra donation appeals that were taking place, what had happened to the

funds already raised, and why another appeal was being made for more funds. He also conveyed that the public were asking why they were starting a new project when the previous project had not been completed, and wanted to know where the donations were going. Finally, he conveyed that the congregation was concerned that the trustees had not used the £35,000 raised for the purpose they said they would.

4. On 21 July the claimant conveyed the facts that the Mosque would have to pay the bills using public money from donations, that it would cost more due to the failure to pay on time, that the loss was a result of the failure to deal with the Mosque's finances properly and that it was a waste of public money.
32. I therefore find that the claimant did disclose information on each of the four occasions above.
33. I have then gone on to consider whether, at the time he conveyed the information above, the claimant believed that the information disclosed tended to show that the respondents were failing to comply with a legal obligation or that a criminal offence was being committed.
34. I am not persuaded on the evidence before me that the claimant believed the information tended to show that a criminal offence was being committed, as he did not say as much. I do however accept that the claimant genuinely believed that the information tended to show that the respondents were failing to comply with a legal obligation, namely an obligation as a charity and as trustees of a charity to account properly for monies received and to keep proper accounting records.
35. I have then considered whether it was reasonable for the claimant to hold this belief, bearing in mind that there is both a subjective and an objective element to this test. In relation to the subjective belief of the claimant, as set out above I find that the claimant did believe that the information disclosed tended to show a failure to comply with a legal obligation.
36. I also find that there was objective evidence to support his belief. The First Respondent is a charity and there was evidence that donations were not being recorded. Mr Faruk commented on 29 October that there was no need to log everything down. There was objective evidence that the finances were not being properly managed, as demonstrated by the discovery of unpaid bills running to thousands of pounds, with late payment charges.
37. I take judicial notice of the fact that it is good practice for any organisation, particularly a charity which raises funds from the public, to properly record and account for the income that it receives.
38. I also accept that, at the time he disclosed the information, the claimant genuinely believed it was in the public interest, namely in the interests of the congregation of the Mosque and others who had made donations. There was no evidence before me as to the number of people who made donations, but given that up to £1,300 was

raised in donations every Friday, and that £35,000 was raised for a particular project, I am satisfied that there were a relatively large number of people making donations.

39. The claimant had no personal interest in making the disclosures as the money was intended for use by the First Respondent.
40. I take account of the fact that the nature of the wrongdoing the claimant was concerned about was that thousands of pounds of donations was unaccounted for, and that people were asking the claimant about it. I also take account of the fact that the First Respondent is a place of worship and a charity, which the public would expect to demonstrate high levels of honesty and integrity.
41. It was also reasonable for the claimant to believe that the disclosures were made in the public interest. People were asking him questions about the Mosque's finances, and expressing concerns to him that there was a lack of transparency and accountability in relation to finances and donations.
42. For the above reasons I find that the disclosures made by the claimant were qualifying disclosures falling within section 43B of the Employment Rights Act 1996. As the disclosures were made to those involved in running the First Respondent which employed the claimant, they were made to the claimant's employer, and fall within section 43C of the Employment Rights Act 1996 and are protected disclosures.

Employment Judge Ayre

Date: 10 October 2023

JUDGMENT SENT TO THE PARTIES ON

18 October 2023

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