



EMPLOYMENT TRIBUNALS

Claimant: Mr Hamisi Mzuwanda

Respondent: Adelaide Care Limited

Heard at: London South (Croydon)

On: 2nd to 4th October 2023
(via CVP)

Before: Employment Judge Wright

Representation

Claimant: Mr A Otchie - counsel

Respondent: Mr R Ryan - counsel

JUDGMENT having been given to the parties on 4/10/2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

It is the Judgment of the Tribunal that the claimant's claims of: automatic unfair dismissal contrary to s.103A Employment Rights Act 1996 (ERA); holiday pay and; wrongful dismissal are not well-founded and are dismissed.

REASONS

1. The claimant presented his claim on 11/10/2021 following a period of early conciliation between 2/7/2021 and 5/7/2021. He was employed by the respondent as a Support Worker between 7/5/2020 and 3/8/2021. His employment was terminated as a result of his conduct.
2. The respondent provides residential and domiciliary care to vulnerable adults with learning difficulties.
3. The claimant alleges that he was automatically unfairly dismissed for making two protected disclosures. He also claims wrongful dismissal in

that he was summarily dismissed and not paid notice pay; and holiday pay (which was unspecified). The respondent denies all of the claims.

4. The hearing started late, this was due to the claimant's representative not joining at 9.30am as instructed. There was an error in the link provided and this was not rectified until 10.25am.
5. The claimant also took issue that the respondent's witness statements were not provided until late on Friday 29/9/2023 (the last working day before the hearing commenced). Whilst this is not acceptable and in the absence of any explanation from the respondent, it was decided that it was in accordance with the overriding objective to proceed. It was envisaged that the claimant's evidence would take up the first day of the hearing and therefore, there was time for the claimant's representative to prepare prior to the respondent's evidence starting. In any event, the respondent's witness statements contain nothing that would catch the claimant by surprise and the respondent's eight-page grounds of resistance are detailed. In addition, the first adjournment was an hour longer than planned, which allowed the claimant more time to consider the respondent's witness statements.
6. A preliminary hearing took place on 11/7/2023. That hearing produced a list of issues, however there was the option for the claimant to identify a second (or more) protected disclosure(s). The claimant identified a second disclosure on 17/2/2021. Notwithstanding the list of issues was not updated to reflect this, the respondent had understood that the second disclosure was relied upon.
7. The Tribunal heard evidence from the claimant. For the respondent it heard from: Mr Aman Jude (Registered Care Manager at the location where the claimant worked); Mr Dawda Dubois (Deputy Care Manager); Mrs Susan Jude (HR Manager); and Ms Shella Mupfupi (the employee to whom the claimant showed the photographs).
8. There was an agreed bundle of 426-pages, a cast list and a chronology. Both parties gave closing submissions which were taken into account.
9. Overall, the claimant lacked credibility. His answers were often evasive and lack certainty. He was inconsistent. For example, he was asked if LJ had told him she was pregnant; he answered he could not remember. This is really a question to which the Tribunal would expect a yes or no answer. He would not accept that his relationship with LJ was at least a friendship. Yet they were exchanging messages on the 27/5/2021 and were colluding (page 224). Furthermore there was evidence that LJ sent her university course work to the claimant on 27/6/2020 (page 114 and 128). The claimant also claimed that he could not have shown a colleague any photographs on his mobile telephone as he was not allowed to use it at work. Whereas he was rebuked on numerous occasions for using his telephone at work and this was a constant concern for Mr Dubois. Certainly, the claimant did not say at the time he was accused of showing a colleague photographs on his telephone: 'that simply cannot have happened as my telephone is always in my locker'.

10. By contrast, the respondent's witnesses gave straight-forward and credible evidence.
11. The following findings of fact were reached by the Tribunal, on the balance of probabilities, having considered all of the evidence given by witnesses during the hearing. This included the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.
12. Only relevant findings of fact pertaining to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements or evidence.

Findings of fact

13. The claimant's employment commenced on 7/5/2020. He was employed as a support worker and was assigned to a service user called HB.
14. In September 2020 the claimant expressed his ambition to be assigned as HB's key worker. It seems this would result in an increase in his salary. Nothing happened as a result of this conversation. Mr Jude had told the claimant during their conversation that there were some performance issues which needed to be addressed. The performance issues were his use of his mobile telephone and his failure to appropriately complete and update documents.
15. A supervision meeting took place on 18/11/2020 (page 147). It was confirmed the achievement of passing probation and it referenced the fact the claimant wished to 'better himself' and his objective of 'working his way in the organisation ladder'.
16. The meeting also referenced:

'[The claimant] is aware of his responsibilities to report any health and safety issues to the shift leader immediately ie client's well being and maintenance issues.'
17. There was no mention of the claimant being appointed as HB's key worker.
18. The claimant followed this conversation up in a letter dated 5/12/2020, sent to the respondent on 7/12/2020 (pages 150 and 152). The letter said:

'Re: Key Worker Terms Agreement

3 Months ago we held meeting at Jane House between myself (Hamisi), Eman and Dawda discussing my new role as a key worker to customer (HB). During the meeting discussed and

I was promised to have a new contract for the role and pay rise.

As I am writing this letter I haven't heard any progress follow that agreement follow that meeting, I found this as demoralising as I was so motivated and took the position with high enthusiasm and high spirit of supporting our customer.

I wish this agreement will be reinstated as agreed, otherwise will leave me with no choice than continuing doing my basic role of just a support worker.

I am full dedicated to support our customers and expected to be fully supported by management.'

19. Mr Jude responded by letter on 8/12/2020 (page 153):

'I write in response to your letter dated 5th December 2020 regarding the Keyworker position at Jane House re our client, HB.

During our informal chat in September 2020 whereby, you expressed an interest in the role, it was made clear to you that certain issues/concerns would need to be resolved prior to any potential promotion.

As you are aware, on numerous occasions you were observed using your mobile phone (which is against company policy). Mr Dawda Dubois spoke to you about this poor practice, on 2nd November 2020 whilst you were in HB's log cabin and again, on 18th November 2020 whilst you were in the annexe's small office. In addition, your lack of completed or updated documentation namely support plans, risk assessments, HB's weekly programme, which is a requirement of your current role as Support Worker is also of great concern.

Unfortunately, until we see an improvement re the above, we are unable to consider you for this role and as explained this could ultimately lead to a performance review warning.

However please be assured that once you can overcome these issues, which I am more than confident you will be able to achieve, we will of course re-visit your request and schedule in an interview.'

20. The claimant claimed he did not receive Mr Jude's letter and suggested that it had been fabricated as part of these proceedings. That is not accepted. The claimant seeks to explain inconvenient documents by claiming he did not receive them. Even if the claimant did not receive a response from Mr Jude, it is inconceivable that he would not send a further email and follow up the outstanding matter. The claimant's version of events is not accepted.

21. The claimant gave very limited evidence-in-chief in respect of this allegation. He said (paragraph 10):

'I experienced a high-level of hostility following my request to pay me as promised when promoted to a Key Worker position as shown in page 148, box 9. I believe that this was due to the email I wrote on 5 December 2020, in which I stated how demoralising it had become to work without a new contract or pay, reminding the Respondent of his promise. AJ responded to my letter on the 8th December 2020 in which he made several disparaging remarks.'

22. Mr Otchie did not address this alleged disclosure in his closing submissions. He was asked if the claimant was abandoning his case that this incident was a disclosure. He responded that he was neutral and that he was leaving this as a matter for the Tribunal.
23. This is not a protected disclosure and it is fanciful to suggest that it is such. It is a complaint from the claimant that the key worker role has not materialised. The Tribunal finds the discussion regarding the key worker role was subject to the claimant's compliance with the respondent's policies improving. Even then, nothing was 'promised' to the claimant. It was a discussion and nothing more.
24. The next issue which arose was an incident on the 9/2/2021 when HB became agitated, which resulted in him scratching the claimant on his face (page 168).
25. Mr Dubois witnessed the incident and his evidence was that the claimant had invaded HB's personal space, which resulted in HB scratching the claimant. Mr Dubois said the incident could have been avoided if the claimant had followed his verbal prompts and HB's positive behaviour support plan.
26. It is the claimant's case that rather than there being two support workers with HB as per his care plan and the Local Authority funding, he was alone with him.
27. Mr Dubois does not accept that and his evidence is that he witnessed the altercation through the kitchen window, gave instructions to the claimant whilst it was ongoing and supported him in the aftermath. It is only the claimant who states he was alone with HB.
28. The documentation does not support the claimant's version of events.
29. At 20:40 the claimant sent a photograph of the scratch to his cheek to Mr Jude and said HB had scratched him and the incident had taken place around 16:50 (page 168). Mr Jude responded a minute later and said he hoped the claimant was okay and asked him if he had completed an incident report. The claimant replied he had only filled in the 'ABC chat', not an incident report. The claimant suggested he would put the details into an email to send to Mr Jude and indicated at 23:18 that he had done so (page 170). The email appears at page 171. The claimant made no mention of the staffing situation.

30. Mr Jude responded at 23:19 and said (page 172):

'Thanks for sending this through, I'll speak with [Mr Dubois] in the morning and get back to you by lunchtime.'

31. The claimant did not mention a lack of staff on the ABC recording sheet (page 184).

32. Mr Dubois completed an Incident Report Form on the 9/2/2021 (page 156). He recorded the staff in the area were the claimant and AS.

33. In his evidence-in-chief, the claimant said about this disclosure (paragraph 9):

'I complained about the shortage of staff on several occasions (please see my email on 17th February 2021, page 177). This is also mentioned in the Investigating Meeting Minutes notes on page 208.'

34. The email sent to Mr Jude and Mrs Jude read (page 177 and 420):

'Subject: Raising a concern

Dear sir/Madam

Am raising a concern regarding mr Hb. I previously spoke with F regarding this issue but i thought it will be good if i write to you and let you know my ideas.

As you are aware the incident that happened recently on 9/2/2021, staffs gave different statements over one incident and this shows there was something wrong somewhere.

So i spoke to F and also LT was present on 14/2/2021 .

So i requested if i could have a second staff while working with HB as in the care plan to avoid such incidents, and also incompetency between the staffs. By this we were supposed to be 3 staffs at the time of incident but it happened and I found myself alone.

Kindly advise me accordingly.'

35. Mr Jude arranged a zoom meeting which took place on 23/2/2021 and he explained HB had funding for two support workers and that staffing ratio had been in place on the 9/2/2021. There was no follow-up from the claimant after this meeting.

36. There is no evidence from the claimant as to what form of wrongdoing this statement 'tends to show' (s.43B(1) ERA). There is a reference in the Order of 11/7/2023 which referred to the component parts of s.43B in that (paragraph 1.1 page 55):

1.1.2 Did he disclose information?

1.1.3 Did he believe the disclosure of information was made in the public interest?

1.1.4 Was that belief reasonable?

1.1.5 Did he believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?

1.1.6 Was that belief reasonable?

37. This was the structure the claimant would need to follow to establish he had made a protected disclosure.
38. It is not specified how the claimant seeks to establish that *he believed* the disclosure of the information was made in the public interest.
39. It was asserted in submissions that this was the case, but there was no evidence-in-chief from the claimant to that effect. This did not go beyond a mere assertion.
40. Furthermore, the claimant has not established that any belief he had in the disclosure of information was made in the public interest was reasonable.
41. Nowhere does the claimant expressly refer to his belief that his statement showed that the health and safety of an individual had been, was being or was likely to be endangered. Even if a link could be made between the claimant's statement and s.43B(1)(d) ERA, the claimant has not set out how he held that reasonable belief.
42. The Tribunal also finds that there is no allegation by the claimant of any wrongdoing. He is merely expressing his 'idea' and suggesting a preference for two members of staff to be present when supporting HB. That is notwithstanding that the respondent's evidence is accepted that the Local Authority funding for HB did provide for two support workers and that the respondent did so.
43. This is contrasted with and was highlighted in Mr Ryan's submission, with the claimant's statement made on the 23/4/2021 in a staff meeting (page 200). The staff were reminded yet again by Mr Dubois that they were not allowed to have access to their mobile telephones during working hours and that they should be placed in the lockers provided. The claimant took issue with this and is recorded in the minutes as citing:
- '... the Organization may be in breach of human rights by taking private belongings of Staff and wanted to challenge if this was lawful...'
44. Mr Dubois is recorded as responding that the respondent was not taking belongings away and that the staff retained the key to their locker. He

- pointed out that the issue of mobile telephones came up at almost every staff meeting and the staff continued to abuse this.
45. This demonstrated that not only was the claimant capable of speaking up and challenging an instruction which he believed to be unlawful; but also that the respondent was able to respond and address the concern.
 46. Furthermore, there is no evidence that the respondent was resistant to any member of staff who raised concerns, whether or not they were protected disclosures. For example, on 9/3/2021 the claimant in a supervision session raised that there was a trip hazard in HB's bedroom and Mr Dubois said he would get it fixed as soon as possible (page 188).
 47. The Tribunal also heard evidence that there was an incident in February 2021 at another site where a member of staff had assaulted a service user. This was witnessed by two other members of staff. One of them reported the event. As a result of the other member of staff not reporting it, they were dismissed. This caused the respondent to highlight its safeguarding and whistleblowing policies at a meeting on 22/2/2021 and Mr Dubois printed off both policies and handed them to the staff (page 179). Mr Dubois in particular referred to reporting abuse and that anyone doing so will have the full support of management and the law. He also referred to external avenues such as the Police, CQC, Social Workers, GPs etc, however he said it was advisable to follow the internal route.
 48. The claimant attended the meeting and he signed to confirm he had received the minutes on the 23/2/2021 (page 183).
 49. If the Tribunal is wrong that the statement made on 17/2/2021 did not amount to a protected disclosure, it has considered the claimant's case that the reason or the principal reason for his dismissal was that the claimant had made a protected disclosure.
 50. Mr Dubois was aware in Spring 2021 that LJ wanted to speak to him about another member of staff. Mr Dubois' impression was that she did not seem particularly comfortable in talking to him and he suggested she speak to Mr Jude or Mrs Jude (HR Manager).
 51. On the 10/5/2021 LJ telephoned Mr Jude. LJ reported that the claimant was referring to her as his wife or girlfriend and that she wanted it to stop. She told Mr Jude that she did not want to make an issue of this as she had a partner. She also told him that they had gone out together a couple of times, but that they had ended the relationship as they were not suited. Mr Jude reported this to Mrs Jude.
 52. Subsequently, on the 20/5/2021 Mr Jude became aware of further allegations that the claimant had shown a work colleague (SM) inappropriate photographs of LJ. Mr Dubois conducted an investigation.
 53. As a result, Mr Dubois suspended the claimant from his duties on the 21/5/2021. The suspension letter is dated 21/3/2021 and the Tribunal accepts this was a simple error (page 191). The claimant claims the

suspension letter was written in March 2021; yet he has advanced no evidence to show that it took effect then, or that in fact he was suspended in March 2021 in advance of the respondent becoming aware of the allegations.

54. The claimant was in breach of the terms of the suspension in that he was informed he should refrain from contacting any fellow employees to discuss not only work-related matters, but also matters related to the allegations of serious misconduct made against him. Not only did the claimant contact LJ and collude with her; he also sent her a copy of the interview notes with SM. The respondent did not take issue with this.
55. In the exchange of messages between the claimant and LJ, she referred to telling 'them' (management) that the claimant had to stop telling people she was his wife (page 225) and that someone had told her the claimant had shown them her photograph and that she was not aware of that (page 226). Although the messages are not written in perfect English, that was the gist of the message.
56. The claimant was certified as unfit for work on 27/5/2021 (page 223). He remained unfit for work and did not return to work.
57. The respondent's Quality and Assurance Manager (SK) was charged with the disciplinary matter. She wrote to the claimant on the 1/6/2021 to invite him to a disciplinary meeting on 3/6/2021 (page 227). The claimant responded on the 2/6/2021 and said that it was short notice to arrange to be accompanied and that he was too ill to attend a disciplinary meeting (page 229).
58. Further correspondence followed. The respondent offered the claimant the alternative options of (page 265):

attending the respondent's head office;

the meeting taking place via zoom;

the meeting taking place at the claimant's home or alternative premises;

the meeting taking place via telephone;

the claimant to send a representative to act on his behalf; or

the claimant submitting a written statement.

The claimant did not attend the disciplinary hearing and he did not appeal the decision to dismiss him for gross misconduct on 3/8/2021 (page 275).

59. In total, the respondent had rearranged the disciplinary meeting on five occasions.

60. Separately, on the 19/6/2021 the claimant sent the respondent a four-page formal complaint and pre-action letter (page 238). The letter is assertive and confrontational. It threatens the respondent with Employment Tribunal proceedings. The claimant made two references to his complaints about understaffing, however, he did not specifically reference his email of the 17/2/2021 or make any reference to whistleblowing or protected disclosures. He did reference his nationality and in the main, the letter is a complaint about his suspension and the respondent's procedure. Had the claimant genuinely believed that he had made a protected disclosure in February 2021, it is expected that in such an assertive letter, he would have said as much.
61. SK took the decision to dismiss and the claimant has not advanced any evidence to suggest that she knew of his February 2021 email. Furthermore, there is no evidence from the claimant that she was aware of his grievance. The burden of proof being on the claimant, he has not advanced any evidence to suggest that SK was aware of, much less motivated by, any issue he had previously raised.
62. Mrs Jude treated the letter as a grievance and as the claimant was unwell, offered him the meeting options of: a zoom meeting; for it to take place at his home or a neutral venue; by telephone; or for him to send a representative. The claimant did not take up any of the options offered. Mrs Jude determined the grievance on the papers and rejected it. The claimant did not appeal the outcome of the grievance.
63. Separately to this, LJ had contacted Sussex Police, who then contacted Mrs Jude. She had some email correspondence with a PC in June 2021, it seems however that nothing came of the referral to the Police (page 252).
64. The Tribunal totally rejects the claimant's contention of a conspiracy theory. In that, SM made up the allegations against the claimant, in order that he would be dismissed and she would be appointed as HB's key worker. She was in fact appointed as HB's key worker, however that was not until November 2022. It is not accepted that there was such a plot and it is accepted that SM was shown the photographs by the claimant. Certainly LJ in her message to him said that he had shown someone her photograph (page 226).
65. The Tribunal is entirely satisfied that the reason for the claimant's dismissal was the misconduct. It was reported, investigated and the claimant was suspended. Despite having had the opportunity to do so, the claimant did not engage in the disciplinary process. The respondent reasonably took the decision to dismiss the claimant. The misconduct matter was a completely intervening event and there is no evidence from the claimant to suggest that the person who took the decision to dismiss, was aware of any earlier matters he had raised.
66. Mr Otchie made much of two comments by the respondent that they were under-staffed and said that this confirmed the claimant's report regarding staffing was correct. Even if it were accepted the respondent was under-

staffed, this does not assist the claimant. He has the burden of proof to show he made a qualifying protected disclosure regarding the staffing levels; not to now establish the respondent was under-staffed on a particular date.

67. The claimant had asked to transfer to a weekday working pattern from working weekend shifts. AY wrote to the claimant on 25/3/2021 and said that due to staff shortages, the respondent was not able to grant the request at that time (page 195). Similarly, on 25/3/2021 Mr Jude made the same observation (page 197). All AY and Mr Jude were referencing, was that at that particular time, there was not enough cover for the weekend shifts to transfer the claimant to weekday working. The comments do not evidence that the respondent was understaffed.
68. In respect of holiday pay, the claimant did not advance any evidence-in-chief to say what was wrong with his holiday pay or how he challenged it. It was not addressed in closing submissions.
69. Mrs Jude said she was informed by payroll that the claimant had accrued 76.8 hours holiday by the time of his dismissal. He had taken 6.8 hours leave and thus he was paid 70 hours in August 2021 (page 401).

The Law

70. The claimant pleads that he has made a protected disclosure under s.43B of the Employment Rights Act 1996 (ERA) and he was automatically unfairly dismissed per s.103A ERA.

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, is being or is likely to be deliberately concealed.

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.

71. In Kilraine v London Borough of Wandsworth [2018] ICR 1850 the Court of Appeal said that the word 'information' in S.43B(1) ERA has to be read with the qualifying phrase 'tends to show'; the worker must reasonably believe that the information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f) ERA.
72. An example was given of a hospital worker informing their employer that sharps had been left lying around on a hospital ward. If instead the worker had brought their manager to the ward and pointed to the abandoned sharps, and then said 'you are not complying with health and safety requirements', the oral statement would derive force from the context in which it was made and would constitute a qualifying disclosure. The statement would clearly have been made with reference to the factual matters being indicated by the worker at the time.
73. Section 43B(1) ERA requires that, in order for any disclosure to qualify for protection, the person making it must have a 'reasonable belief' that the disclosure 'is made in the public interest'. That amendment was made to avoid the use of the protected disclosure provisions in private employment disputes that do not engage the public interest.
74. In Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) 2018 ICR 731, CA, a disclosure regarding internal accounts was held to be in the public interest.
75. In Panayiotou v Chief Constable of Hampshire Police 2014 ICR D23 the EAT upheld a decision that the reason for dismissal and detriments was not the fact that Mr Panayiotou made protected disclosures; but the manner in which he pursued his complaints. It was found that he would 'campaign relentlessly' if he was dissatisfied with the action taken by his employer following his disclosures and would strive to ensure that all complaints were dealt with in the way he considered appropriate. As a result, the employer had to devote a great deal of management time to responding to correspondence and complaints. In essence, he had become 'completely unmanageable' and this led to his dismissal. It was held that it was the combination of his long-term absence from work and the way in which he pursued his various complaints which led to his dismissal and his claims under s.47B and s.103A failed. This authority demonstrates the need for there to be a causal link between the alleged protected disclosure and the dismissal.
76. A respondent may defend the claim on the basis that the claimant was not subjected to a detriment because he made a disclosure but because of some form of misconduct that was committed in the course of making the disclosure, such as a breach of confidentiality or the making of manifestly unfounded allegations (Bolton School v Evans 2007 ICR 641 CA).
77. The claim for holiday pay would fall to be an unauthorised deduction from wages contrary to s.13 ERA:

13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

78. A claim for wrongful dismissal is a common law action based on breach of contract. The Tribunal has to consider whether the employment contract has been breached. The Tribunal is not concerned with the reasonableness of the respondent's decision to dismiss but with the factual question: was the claimant guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the respondent to summarily terminate the contract?

Conclusions

79. The letter of 5/12/2020 was not a protected disclosure. It was a complaint about pay and/or promotion.

80. The email of 17/2/2021 was not a protected disclosure. It was a mere statement of the claimant's dissatisfaction regarding the incident with HB on 9/2/2021 and an expression of his views regarding the situation. It included his unfounded view that the staffing levels were inadequate.

81. The principal reason for the claimant's dismissal was his conduct in respect of LJ. Although there is not a claim under s.94 ERA, there was a reasonable investigation, after which the respondent had taken a reasonable view that there was wrongdoing and there was a reasonable process, including the disciplinary hearing; with which the claimant chose not to engage. It is not accepted that any health issues prevented him from participating in the process and he was offered numerous alternatives. Ultimately, the respondent was entitled to conclude the process and it reached a reasonable decision to terminate his employment.

82. The claim of automatically unfair dismissal contrary to s.103A ERA is not well-founded and is dismissed.

83. The Tribunal is satisfied that the claimant was culpable of the misconduct alleged. The respondent found the claimant to be in repudiatory breach of the contract of employment, which entitled it to summarily dismiss him.
84. The claim of wrongful dismissal is not well-founded and is dismissed.
85. The claim for holiday pay was not effectively litigated, it is not well-founded and is dismissed.

Employment Judge Wright
21st October 2023