



# EMPLOYMENT TRIBUNALS

## LONDON CENTRAL

**Claimant:** Ms WING SZE SIU

**Respondent:** STERLING LAWYERS LIMITED

**Heard :** By video [CVP]                      **On:** 1-3 & 6 November 2023 (hearing)  
10 November 2023 (in chambers)

**Before:** Employment Judge Sutton KC

Mrs C. Brayson

Mr T. Harrington-Roberts.

### Appearances

For the claimant: In person

For the respondent: Mr M. Lansman, counsel

## JUDGMENT

The claim is dismissed.

# REASONS

## INTRODUCTION

1. The Claimant was employed by the Respondent in the role of trainee solicitor from 1 July 2021 until 7 October 2022, when she was summarily dismissed. The Respondent contends that it was entitled to terminate the Claimant's employment without notice on grounds of gross misconduct.
2. By a claim presented to the Tribunal on 9 December 2022, the Claimant asserted that the reason or principal reason for her dismissal was that she had made protected disclosures; alternatively, that it was by reason of her pregnancy. She also complained that the Respondent had fundamentally breached her contract of employment by dismissing her without notice and she raised further monetary claims.
3. A case management hearing was conducted by Employment Judge Burns on 16 March 2023 at which it was directed that this hearing would address issues of liability but not remedy and that it should take place, with the agreement of the parties, by video link as the Claimant was resident in Australia. It was noted that Australia was one of the territories from which witness testimony was permitted to be received remotely by UK Tribunals.
4. Employment Judge Burns gave directions at paragraph 6 of her Case Management Order for witness statements to be exchanged and that they should contain 'all of the evidence' the parties intended to give at the hearing. Detailed directions were provided as to the required form and content of the witness statements.
5. In the event the Claimant neglected to serve any form of witness statement in compliance with the Tribunal's direction. No satisfactory explanation was provided as to why not. At the commencement of the hearing, to enable the proceedings to continue and in fairness to the claimant, the Tribunal agreed

to treat the one and a half page attachment to her Claim Form as constituting the Claimant's witness statement, and she adopted the same at the commencement of her oral evidence. The Respondent did not object to this approach.

6. Witness statements were produced on the Respondent's side by Andrei Luca, Immigration and Compliance Manager, who undertook the investigation into the Claimant's conduct; Navdeep Gill, Principal Solicitor and Director and Ruslan Kosarenko, Senior Partner and Director, who made the decision to dismiss the Claimant. Ms Gill did not attend the hearing. Although no medical note was produced, the Tribunal was informed that she was too ill to attend. Neither side requested a postponement of the hearing to facilitate her attendance at a later date. In the circumstances, the Tribunal agreed to receive her witness statement in evidence and attach to it such weight that it considered appropriate, bearing in mind that its content would not be tested in cross-examination.

## **ISSUES**

7. Appended to Employment Judge Burns' case management order was the following agreed List of Issues.

### **Public interest disclosure – Employment Rights Act 1996 section 43B**

- (1) Did the claimant make the following disclosures:

The Claimant relies on disclosures that are contained in an email that she sent to the Solicitors Regulation Authority [SRA] and copied to the Respondent on or around 4/5 September 2022 which she says contains disclosures of information that showed or tended to show:

- (i) that a criminal offence has been committed, is being committed or is likely to be committed (section 43B(1)(a) Employment Rights Act 1996)
- (ii) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (section 43B(1)(b) Employment Rights Act 1996)
- (iii) that a miscarriage of justice has occurred, is occurring or is likely to occur (section 43B(1)(c) Employment Rights Act 1996) or

- (iv) 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 ((section 43B(1)(f) Employment Rights Act 1996)?

### **Dismissal**

- (2) It is not in disputed that the Respondent dismissed the Claimant. What was the effective date of termination?

The Claimant says it was 7 October 2022. The Respondent currently says it was 23 September 2022.

### **Reason for Dismissal**

What was the principal reason the claimant was dismissed?

- (3) Was it that she had made a protected disclosure (pursuant to section 103A Employment Rights Act 1996) and/or because she was pregnant (pursuant to section 99 of the Employment Rights Act 1996)?

### **Equality Act 2010 section 18: pregnancy & maternity discrimination.**

- (4) Did the respondent dismiss the Claimant in the protected period defined in section 18 (2) and (6) of the Equality Act 2010?

If so, was the Claimant's dismissal because of the pregnancy?

### **Unpaid annual leave**

- (5) When the Claimant's employment came to an end, was she paid in lieu of her entitlement to untaken but accrued holiday under regulation 14 of the Working Time Regulations 1998 and/or her training contract?

### **Unauthorised Deductions**

- (6) Did the respondent make unauthorised deductions from the claimant's wages in accordance with Employment Right Act 1996 section 13?

The Claimant says she was entitled to be paid up to and including 7 October 2022.

### **Breach of contract**

- (7) Did the Claimant fundamentally breach the training contract by an act of so called gross misconduct? This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the gross misconduct.

- (8) If not, how much compensation should she get for breach of contract? The Claimant claims that she was entitled to be paid up to and including 31 December 2022 based on an earlier agreement reached between her and the Respondent.

## AMENDMENT APPLICATION

8. By email dated 23 October 2023, the Claimant wrote to the Tribunal seeking permission to amend her claim to introduce allegations of race discrimination and bullying at work. She further sought permission to amend the section of her Claim Form which detailed the quantification of her financial claims. The Respondent objected to the application.
9. Having taken account of the nature of the amendments sought and the guidance of the EAT in *Vaughan v Modality Partnership* UKEAT 0147 20 BA and the earlier caselaw discussed in that judgment, and balancing the injustice and hardship to either party that would arise from the grant or refusal of permission to amend, the Tribunal considered that the application to introduce new allegations of unlawful discrimination and bullying should be refused.
10. The Tribunal considered that the application was made far too late in the day to permit the Respondent a fair opportunity to prepare its response to the same. The Tribunal noted that the complaints of bullying and race discrimination were expressed in wholly generalised terms and neither the Respondent nor the Tribunal could fairly be expected to understand what was being alleged without detailed further particulars being provided.
11. As to the proposed amendments to the quantification of the Claimant's financial claims, the Tribunal indicated its willingness to consider matters of calculation at a remedy hearing should the Claimant succeed in establishing liability.

## DOCUMENTARY EVIDENCE

12. The Tribunal was provided with a bundle of documents by the Respondent running to 306 pages. The Claimant also provided a separate bundle. She explained at the commencement of the hearing that she was content to work with

the Respondent's bundle and would indicate during the hearing if there were further documents not replicated in the same which she considered relevant to her claim. In the event, the Tribunal was not asked to consider any documents from the Claimant's bundle.

13. The Tribunal was provided during the hearing, and at its request, with a copy of the Respondent's disciplinary procedure.
14. At the latter stages of the hearing, both parties provided the Tribunal with documentation bearing on investigations which had been or were in the course of being undertaken by the SRA and Legal Ombudsman into complaints made by the Claimant and clients of the firm against the Respondent, and complaints made by the Respondent against the Claimant. None of that documentation shed any real light on the substantive issues which the Tribunal was asked to determine and the Tribunal was able to derive little assistance from it.
15. Written skeleton arguments were provided by the Claimant and Respondent to accompany their closing submissions.

## **FINDINGS OF FACT**

16. On 1 July 2021 the Claimant commenced employment with the Respondent, a London based law firm, in the role of Trainee Solicitor. The terms of her employment were governed by a written contract. Ms Gill was identified as the Claimant's Training Principal.
17. The employment was initially on a 20 hour per week part-time basis, becoming full time from 1 August 2021, subject to the Claimant securing a Skilled Worker visa.
18. By Clause 8, the contract provided for a base salary of £35,000, reviewable after six months and capable of being varied depending on progress and development. The Claimant was provided with a billing target of four times her salary, effective from 1 November 2021. There was an expectation that the

Claimant would introduce clients to the firm and provision was made for 20% billing commission in respect of such introductions, in accordance with the Respondent's standard commission schedule.

19. By clause 17(d), the contract provided that the Claimant was entitled to have paid holiday in accordance with the Working Time Regulations in each year of employment, in addition to public holidays.
20. By clause 19, the Claimant was required to hold confidential information furnished to her by Respondent in confidence and to use the same only for the purpose of the trade and services the Respondent. Specifically, by clause 19(d), the Claimant agreed that she was not authorised to disclose or distribute confidential information to any third party without the full confirmation of the Respondent. By clause 19(f) and (g), the Claimant agreed that any disclosure of confidential information, intentionally or otherwise, will be deemed a breach of contract, entitling the Respondent to terminate the contract with immediate effect.
21. Turning to the progress of the employment relationship, on or about 25 July 2022, the Claimant agreed with the Respondent that her employment with the firm would come to an end on 31 December 2022. This appears to have coincided with concerns on the Respondent's part that the Claimant was falling short of the billing targets which it expected its fee earning staff, including trainees, to achieve. There were also said to be concerns about the Claimant's personal conduct. Mr Kosarenko stated in evidence that, around this time, he was receiving reports that the Claimant was being rude to other staff, remaining distant from colleagues and refusing to attend the office during business hours.
22. On 18 August 2022, Ms Gill wrote to the Claimant by email recording a number of concerns about her performance. A meeting had been scheduled for the previous day to discuss these issues, which the Claimant had failed to attend. Ms Gill stated that the Claimant had provided no valid reason for her non-attendance.
23. In her email, Ms Gill requested the Claimant attend a meeting on 22 August to discuss a range of concerns, including the granting of refunds to

clients of the firm without authorisation; failure to make appropriate records of clients and billing details and copying work communications to a private email address, in breach of the Respondent's confidentiality requirements. The meeting scheduled for 22 August 2022 again did not take place.

24. Mr Luca, who had been tasked with undertaking the investigation into concerns about the Claimant's conduct, stated in his evidence to the Tribunal that, with the assistance of the firm's IT manager, he recovered 106 emails which had been sent by the Claimant from her work email account to a private email address. Mr Luca explained that the emails in question, the first of which was sent on 19 June 2022, contained data, documents related to clients introduced by the Claimant; staff members; telephone logs and internal documents. He maintained that this dissemination of information constituted a serious breach of the Respondent's confidentiality requirements.
25. The Claimant's responses on this issue in cross-examination were regarded by the Tribunal as somewhat evasive, including regarding her knowledge of the external email address. In the light of the witness testimony and documentary evidence available to it, the Tribunal found on balance that this transfer of client related emails by the Claimant to a private email address under her control had taken place. She provided no clear or satisfactory explanation as to why she had done so.
26. On 23 August 2022, the Claimant wrote to the Directors of the Respondent calling upon them to process refunds in excess of £9,000 to a number of clients whom she had introduced. Ms Gill stated in her witness statement that the Claimant sought these refunds despite having billed for services to the relevant clients and claiming commission in relation the sums for which refunds were sought. For her part, the Claimant maintained that all client refunds were justified in circumstances where only part of the promised services had been provided.
27. On 5 September 2022, the Claimant was suspended on full pay by Mr Kosarenko while Mr Luca undertook an investigation into the Claimant's work activities, and against the background of her failure to attend the meetings referenced above.



The Claimant's access to her work email, the Clio system and the Respondent's office were restricted during the period of suspension.

28. By email dated 13 September 2022, Ms Gill asked the Claimant to attend a further meeting on 15 September 2022 to discuss issues of file management and her contact with clients. A number of particular client cases were identified by Ms Gill in her email. Once again, this meeting did not take place. The Claimant explained that she was unwell with Covid from 15 to 27 September 2022.
  
29. On 17 September 2022, the Claimant reported the Respondent to the SRA and the Legal Ombudsman. The Claimant's email of 17 September 2022 is headed 'Fraudulent Activities Sterling Lawyers Ltd' and was copied to Mr Kosarenko and Ms Gill. Attached to the email was a statement headed 'Official Declaration', which contained amongst other matters the following allegations:
  - (i) use by Mr Luca of the Claimant's name to issue documents and demand legal funds;
  - (ii) leaking of client information, finance and case details by Mr Luca by sending client information to a 'different client via email on 14 September 2022;
  - (iii) breach by the Respondent of data protection law and regulations by using the Claimant's personal information without her consent and knowledge.

The claimant stated that she had also reported the same matters to the Information Commissioner and to the Police.

30. This is the first disclosure made by the Claimant to the SRA and copied to the Respondent. It post-dates the alleged disclosure relied upon by the Claimant in the agreed List of Issues detailed above.

31. On 20 September 2022, Ms Gill wrote to the Claimant asking her to attend a disciplinary hearing on 21 September 2022 at the Respondent's offices. The letter recorded the following allegations which were said to amount to misconduct:-
- (i) showing disrespect to superiors and colleagues and the organisation;
  - (ii) directly challenging management decisions;
  - (iii) refusing to collaborate (*sic*) and/or produce a statement or evidence of conflict of interest;
  - (iv) criticising the business by raising false accusations;
  - (v) blaming others for performance errors;
  - (vi) fraudulent activities in relation to Clio time recordings, billings, invoices and procedures.
32. The Claimant was asked to bring to the meeting all electronic devices used for work purposes. She was offered the opportunity to be accompanied at the meeting and was warned that dismissal was a possible outcome. Despite his role as case investigator and the requirements of the Respondent's disciplinary procedure, no investigation report had been produced by Mr Luca. Neither had he collated a pack of evidence to be considered at the hearing.
33. The disciplinary hearing took place at 2pm on 21 September 2022, conducted by video. Present at the meeting were Mr Kosarenko, Mr Lysenko (a fellow director of the Respondent), Mr Luca and the Claimant. The meeting was recorded. The Tribunal was provided with a written transcript of the disciplinary meeting and listened to the taped transcript in the course of the hearing.
34. The meeting broke down almost at once due to the Claimant's objection to Mr Luca's attendance and the fact that he had been asked by Mr Kosarenko to

conduct the meeting. After roughly a quarter of an hour, the meeting drew to a close without Mr Luca explaining his investigation's findings and the Claimant providing her response to any of the allegations.

35. On 21 September 2022, the Claimant sent a further email to Ms Gill, Mr Kosarenko, Mr Lysenko, and Mr Kuldeep Chair, a consultant engaged by the Respondent. The email was copied to the SRA. In this email, the Claimant complained about alleged breaches of the Respondent's disciplinary procedure. Her email reiterated her concern about Mr Luca's attendance at the meeting. She contended that Mr Luca was one of the individuals whom she regarded as engaging in harassment, discrimination, breaches of GDPR laws and SRA rules, as well as causing serious data leaks to the public. She asserted that Mr Luca had issued fraudulent documents and invoices in her name and without her consent. She again made reference to having notified the Police.
36. The Claimant was invited to attend a reconvened disciplinary hearing on 26 September 2022. This meeting did not take place. A further invitation was extended to the client to attend a meeting on 3 October 2022. Again, for reasons which were not clearly explained in the evidence, the reconvened meeting was not attended by the Claimant either. Given the Claimant's non-attendance at this reconvened meeting, a decision to terminate her employment summarily was reached in her absence. Mr Kosarenko explained to the Tribunal in evidence that he had decided to dismiss the Claimant on that day, albeit that the letter which communicated his decision was produced on 7 October 2022. On balance the Tribunal accepted his evidence in this regard.
37. On 4 October 2022, the Claimant notified the Respondent that she was pregnant. The Respondent's letter to the Claimant, confirming her summary dismissal, was sent to her on 7 October 2022.
38. The Claimant wrote to the Respondent on 7 October 2022 appealing against her dismissal, asserting that it was brought about either in consequence of whistleblowing or the notification of her pregnancy. The Respondent wrote to the Claimant by email on 14 October 2022 inviting her to attend an appeal hearing.

The Claimant contends that she did not receive the email and the appeal proceeded no further.

39. On 20 October 2022, the Respondent submitted a report to the SRA detailing a number of breaches of professional standards which it alleged the Claimant had committed. A heavily redacted version of this report was produced in the hearing bundle. At the Tribunal's request, the Respondent produced a version with only limited redactions, having apparently consulted with the SRA to obtain confirmation that this would not prejudice its ongoing investigations.
40. The issue of holiday pay was addressed in Ms Gill's written evidence, which the Tribunal considered was likely to be reliable on this issue. Her witness statement sets out the Claimant's holiday report, which shows that her accrued pro-rata entitlement had been fully satisfied. The Respondent's Directors had not exercised their discretion in her case to permit paid leave to be carried over from the previous leave year.
41. The Claimant provided not persuasive evidence to suggest that there was a shortfall in the final payment that was made to her at the end of her employment.

## **SUBMISSIONS**

42. On behalf of the Respondent, Mr Lansman first addressed the issue of whether the Claimant's dismissal was either wholly or principally on the ground that she had made a protected disclosure, and therefore automatically unfair pursuant to s.103A of the Employment Rights Act 1996.
43. Noting that the purported disclosure referred to in the Case Management order had not been demonstrated in evidence, Mr Lansman considered whether the Claimant's email and accompanying 'Declaration' sent to the SRA on 17 September 2022 and her later email of 27 September 2022 with associated email trail, satisfied the requirements of a qualifying disclosures, having regard to the four categories of 'failure' relied upon by the Claimant.

44. Mr Lansman focused on the requirement that, for there to be a qualifying disclosure, there must be a disclosure of 'information'. He submitted that it is not sufficient that the Claimant has simply made allegations about the wrongdoer. *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38, EAT.
45. It was submitted that neither of the potential disclosures, read together with their accompanying or related documents, could be viewed objectively as tending to show one of the relevant failures which the Claimant asserts.
46. Mr Lansman submitted that the timing of the Claimant's disclosures suggested a retaliatory motivation, in the face of mounting disciplinary concerns, shortfall in the attainment of her targets, and animosity towards colleagues, and that this undermined her assertion that she held a genuine belief that the purported disclosures tended to show one or more of the relevant failings.
47. Even if the Tribunal were to regard the above-mentioned communications as amounting to qualifying disclosures, the Respondent contended that there was no evidence that they were the reason or principal reason for her dismissal and that the complaint should fail on causation.
48. Turning to the complaint that the dismissal was an act of pregnancy related discrimination, the Respondent asked the Tribunal to accept Mr Kosarenko's evidence that his decision to dismiss the claimant was reached on 3 October 2022, and was thus incapable of being affected by knowledge of the Claimant's pregnancy, the notification of which had first been given the following day.
49. Mr Lansman submitted that the Claimant's right to be paid in lieu of untaken but accrued holiday had been fully satisfied. The Claimant's argument appeared to be that she was entitled to be credited with untaken leave carried over from the previous leave year. But the documents which the Claimant had pointed to did not substantiate this assertion. To the contrary: they showed that leave from previous years can only be carried over with the employer's permission. There was no evidence that such permission had been granted in her case.

50. Turning to the complaint of unauthorised deductions, Mr Lansman set out the detailed calculations of the Claimant's final pay. On the basis on those calculations, the Claimant's pay entitlement had been fully satisfied.
51. The Respondent submitted that the complaint of wrongful dismissal should be rejected. Reliance was placed on the headings of alleged misconduct identified in Mr Luca's witness statement and the documents related thereto as evidence of the Claimant's repudiatory conduct.
52. Turning to the Claimant's closing submissions, she stated that she was afraid to attend the disciplinary meetings or hearings in-person given that she experienced fever due to COVID. She maintained that she was 'at risk of not being able to leave the office alive in case of an emergency medical situation.'
53. In her written submission, the claimant challenged the good character of Mr Kosareko and his style of management of the Respondent firm. She reasserted the validity of the concerns she had raised with the SRA. She maintained that the Respondent had given a misleading account of her request for refunds to be paid to clients and made unfounded accusations about her use of the Respondent's file management systems. She contended that the SRA had cleared her of any wrongdoing following the Respondent's referral.
54. The Claimant asserted that, while working for the Respondent, she had experienced 'torture and slavery directed at people of Chinese descent'.

## **ANALYSIS AND CONCLUSIONS**

55. The Tribunal's fact-finding task in this case has been significantly impeded, on the Claimant's side, by her failure to produce a proper witness statement in accordance with the Tribunal's clear direction, and on the Respondent's side, by the failure on Mr Luca's part, to produce an investigation report with properly collated supporting evidence, to support the disciplinary case which the Respondent raised against the Claimant. Given that the Respondent is a law firm with a developed disciplinary policy, the approach that it adopted in its investigation of the Claimant's professional conduct was seriously deficient and unsatisfactory.

56. A further complicating feature was the reliance which both sides placed on the investigations that had been or were being undertaken by external regulatory bodies including the SRA and Legal Ombudsman. As already noted, the Tribunal was unable to derive any useful information from the material which was produced to it during the hearing related to those external investigations.
57. Turning firstly to the complaint of public interest disclosure, the Tribunal was willing to accept that the Claimant regarded the issues which she had raised with the SRA and other external bodies as tending to show one or more of the 'failures' she relied upon under s.43B of the Employment Rights Act and that she made such disclosures believing them to be in the public interest. The Tribunal accepted that the information which she disclosed met the standard of factual specificity required by the caselaw.
58. For the purposes of testing her case under this heading of complaint, the Tribunal proceeded on the footing that, taking the Claimant's case at its highest, the disclosures to the SRA and other external bodies, copied to the Respondent, in September 2022 satisfied the criteria for qualifying disclosures.
59. The Tribunal did not accept, however, that the Claimant's protected disclosures were a material causative influence on the decision to terminate her employment, still less the principal reason. The disciplinary concerns which resulted in the decision to dismiss the Claimant were clearly identified by the Respondent a month prior to the first of the disclosures made to the SRA on 17 September 2022 and were the subject of ongoing investigation. There was no evidence to suggest that the gravity of the Respondent's concerns about the Claimant's conduct and performance was significantly aggravated by the Respondent's appreciation that she had referred it to external regulatory bodies: the underlying trust of both parties in the employment relationship had already become substantially and irretrievably damaged by that point.

60. The complaint that the Claimant's dismissal was tainted to any degree by the Respondent's knowledge of her pregnancy, derived from her email on 4 October 2022, also fails on grounds of causation. The Tribunal, on balance, accepted Mr Kosarenko's evidence that his decision to dismiss was reached on 3 October, despite the letter of dismissal being dated 7 October 2022.
61. The Tribunal spent a considerable amount of time in its deliberations considering the complaint of wrongful dismissal and whether the Respondent had adduced evidence of repudiatory conduct on the Claimant's part sufficient to justify termination of her contract of employment without notice. The Respondent's case was impeded by the lack of any disciplinary investigation report to support its allegations.
62. Ultimately, however, the Tribunal did conclude on the balance of probabilities that there was one aspect of the Claimant's conduct which, objectively viewed, amounted to a fundamental breach of her contract of employment justifying summary dismissal. That conduct consisted in the sending of a significant number of confidential and client sensitive communications to a private email address controlled by the Claimant.
63. As noted in our findings of fact, the Tribunal found the Claimant's denials when questioned about the criticised conduct to be equivocal and unconvincing. The activity that the Tribunal found proved was clearly repudiatory in character, fundamentally breaching the confidentiality requirements set out in the Training Contract, and the duties of trust and confidence which are integral to the employment relationship.
64. As to the other instances of alleged misconduct on the Claimant's part, the Tribunal felt that the evidence was either too sketchy or insufficiently cogent to satisfy it to the requisite standard of proof. But the Claimant's breach arising out of the dissemination of emails to a private address was sufficient, viewed as a discrete issue, to rebut the complaint of wrongful dismissal.



65. The monetary claims founded upon allegations of unlawful deduction and accrued holiday entitlements are not upheld. These headings of complaint were not addressed in any proper detail either in the document appended to the Claim Form, which was treated as the Claimant's witness statement, or in her written closing submissions. From its review of the documentation, the Tribunal is inclined to accept the Respondent's submission that the Claimant's financial entitlements had been satisfied in full.
66. For the reasons given above, the Claimant's complaints cannot be upheld, and the claim is dismissed.

EJ - Sutton  
15 November 2023

Sent to the parties on:

16/11/2023

For the Tribunal Office: