EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Nick Whitrid	**v**	Latta Hire Limited

Heard at: Cambridge

On: 9, 10, 11, 12 and 13 October 2023

Before: Employment Judge Tynan

Members: Mr C Davie and Mr B Smith

Appearances
For the Claimants: In person
For the Respondent: Mr Dixon, HR Consultant

JUDGMENT

The Claimant's complaints that he was subjected to detriment contrary to s.47B of the Employment Rights Act 1996 and that his dismissal was automatically unfair pursuant to s.103A of the Employment Rights Act 1996, are not well founded and are dismissed.

REASONS

Background

1. By a claim form presented to the Employment Tribunals on 27 February 2019, following ACAS Early Conciliation between 17 January 2019 and 1 February 2019, the Claimant has brought complaints against the Respondent in respect of his dismissal from its employment on 6 November 2018 and subsequent alleged threats and intimidation direct at him, said to have occurred on 27 February 2019. At the heart of the Claimant's complaints are alleged disclosures by him which he claims qualify for protection under Part IVA of the Employment Rights Act 1996 ("ERA").

2. The Respondent is a mobile toilet and welfare hire business. The Claimant was employed by the Respondent as a Delivery Service Driver. He was initially engaged by the Respondent on 25 June 2018 through an agency before being offered permanent employment with the Respondent with effect from 17 September 2018. The Claimant was dismissed on 6 November 2018 with payment in lieu of one week's notice. Whilst the parties disagree as to whether the Claimant was subject to the Respondent's normal probationary period given that he had served time as an agency worker, nothing turns on the point, since his period of service as an agency worker still does not give him sufficient continuous service to be able to pursue a claim for 'ordinary' unfair dismissal under section 98 of ERA 1996, nor does it alter his statutory notice rights.

3. The proceedings have an unfortunate history, having originally been listed to be heard in July 2020. That Hearing was disrupted by the Coronavirus pandemic. Subsequent Hearings could not go ahead for various reasons and the parties' run of misfortune has continued insofar as the Bundles for this week's Hearing were largely lost, effectively delaying the start of the Hearing until Tuesday 10 October 2023, and by Tribunal Member Mr Smith then falling ill on 12 October 2023. With the written consent of the parties we have continued as a 'two person' Tribunal.

4. There have been four Case Management Preliminary Hearings, in the course of which the issues have been discussed and re-visited.

5. The Claimant gave evidence in support of his claim. Although he has struggled to grasp various of the legal issues involved, nevertheless he represented himself effectively throughout the hearing.

6. For the Respondent, we heard evidence from:

   - Mr Matthew Latta, the Respondent's owner and Managing Director. It is not in issue that it was Mr Latta's decision to dismiss the Claimant, so that in terms of s.103A ERA 1996, it is his mindset with which we are principally concerned in seeking to discern the reasons why the Claimant was dismissed;

   - Mr Colin Francis, the Respondent's Transport and Operations Manager. Mr Francis was responsible for collating CCTV footage from 19 and 20 October 2018, extracts from which were referred to extensively in the course of the Hearing;

   - Mrs Sandra Latta, who supports the business in a range of tasks and who was asked by her husband to undertake an investigation into the events of 19 October 2018;

   - Mr Terence Rickwood, a former employee of the Respondent and former colleague of the Claimant. Whilst the parties were ordered at an earlier stage in the proceedings to refer to Mr Rickwood in statements and documents by the initial 'R', the order was not made

pursuant to Rule 50 of the Tribunals Rules of Procedure. No further application was made to the Tribunal in the matter. We have been unable to identify any obvious reason to continue the order or why Mr Rickwood's name should be withheld from this public document; and

- Mr Peter Strong, also a former colleague of the Claimant, who still works for the Respondent.

7. There was additionally a written Statement from PC Christopher Dykstra of the Cambridgeshire Constabulary dated 1 January 2020.

8. Early on in the hearing we viewed certain CCTV footage from 19 and 20 October 2018. Amongst other things, the footage shows very clearly that on 19 October 2018 two portable toilets fell from a trailer being towed by the Claimant into the highway, and that a few moments later a vehicle passed on the other side of the road, breaking to avoid colliding with one of the toilets which was then lying in the road in the rapidly fading light of the late afternoon/early evening. We shall return to this.

9. There was a single Bundle of documents, supplemented by a limited number of documents adduced by the Claimant. As is unfortunately too often the case, disagreements about the Bundle seem to have distracted attention from the issues in the case.

10. Any page references in the course of this Judgement correspond to the Bundle.

Preliminary Observations

11. Where an employee complains that they have been automatically unfairly dismissed in contravention of s.103A ERA 1996 for having made a protected disclosure, the Tribunal is primarily concerned with the reason why they were dismissed, namely what facts and matters were operating in the mind(s) of the person(s) who took the decision to dismiss. If an employee has less than two years' continuous service, they have the burden of establishing primary facts from which it can be inferred that they were dismissed for having made a protected disclosure. We have borne in mind, and explained to the Claimant, that generally we are not concerned with whether a claimed innocent reason put forward by an employer is well-founded, but instead simply whether the reason was genuinely held and actively operating in the mind of the decision maker at the relevant time.

12. S.103A ERA 1996 differs from s.98 ERA 1996 in this regard. Once, but only once, an employee has two years' continuous service, it is not enough that the employer has in mind a genuine, lawful reason for dismissing the employee; the employer must additionally act reasonably in relying upon that reason in dismissing the employee. In other words, the employer should satisfy itself that the reason it is proposing to dismiss the

employee carries some weight and substance. In a misconduct case, for example, that means the employer must ordinarily carry out a reasonable investigation and, generally, not come to any decision in the matter without first hearing what the employee has to say. We have been careful not to confuse or conflate these two quite distinct statutory provisions. The fact remains that the Claimant did not have two years' continuous service with the Respondent when he was dismissed. He cannot therefore complain of 'ordinary' unfair dismissal. In spite of his extensive reference to procedural shortcomings in how his case was handled by the Respondent, such shortcomings are rarely determinative of a claim of automatic unfair dismissal, unless of course the employer's failure to adhere to procedural safeguards supports an inference that the stated reason for dismissal was not genuinely held or operating in the mind of the decision maker at the relevant time. We shall briefly return to this.

13. The further observation we would make is that where an employee is dismissed without notice for gross misconduct and pursues a claim for their notice pay, the Tribunal must decide whether they were in fact guilty of gross misconduct such that they did forfeit their right to notice. This contrasts with the position in 'ordinary' and automatic unfair dismissal claims, where the Tribunal is focused on the reason operating at the time in the mind of the decision maker; in such cases, the Tribunal does not substitute its own view for that of the employer as to what happened. Here, the Claimant was paid in lieu of notice, and in the absence therefore of any claim by him to his notice pay it is not for this Tribunal to decide whether he was guilty or innocent of gross misconduct.

14. As with many unrepresented Claimants who come before the Tribunal, the Claimant holds firmly to the belief that he was treated unfairly by the Respondent and throughout the Hearing was prone to focus on why he says he was not guilty of misconduct. However, as we explained to the Claimant, these are not issues that the Tribunal is required to determine within these proceedings.

Preliminary Issue – Protected Disclosure

15. As the Claimant pursues complaints that he was subjected to detriment and dismissed on the grounds that he made protected disclosures, we must first determine whether or not he made one or more protected disclosures. The Respondent denies that he did.

16. The alleged disclosures upon which the Claimant relies are referred to at paragraph 12(vi) of Employment Judge Johnson's Case Management Summary of 5 December 2019, paragraph 5 of Employment Judge Laidler's Case Management Summary of 25 January 2022 and paragraph 8.1 of Employment Judge Moore's Case Management Summary of 19 April 2023. Unfortunately, the disclosures are not documented with precision, merely that the Claimant allegedly raised unspecified concerns with Mr Latta and Mr Francis on several occasions. In response to an order by Employment Judge Johnson that he provide further and better

particulars of his alleged disclosures, the Claimant sent a nine-page email to Mr Dixon containing his full narrative account of events; he did not limit himself to identifying the specific disclosures relied upon by him.

Section 43B – Employment Rights Act 1996

17. Section 43B ERA 1996 provides that once a Tribunal is satisfied that a worker has disclosed information, in determining whether the worker has made a protected disclosure for the purposes of s.43B ERA 1996 the Tribunal has to ask two questions:-

    a. Firstly, whether the worker believed, at the time he was making it, that the disclosure was both in the public interest and tended to show one or more wrongdoings, or the type described in subsections (1)(a) to (1)(g) of s.43B; and

    b. Secondly, whether assessed objectively, the Claimant's belief (in relation to both those elements) was reasonable?

18. Those principles derive from, amongst others, the Judgments of the Court of Appeal in Babula v Waltham Forest College [2007] EWCA Civ.174, Chesterton Global Limited & Another v Nurmohamed [2017] EWCA Civ.979 and Kilraine v London Borough of Wandsworth [2018] EWCA Civ.1436.

19. The principal issue with which the Court of Appeal was concerned in Kilraine was the circumstances in which allegations made by an employee may constitute a disclosure of information by the worker for the purposes of s.43B ERA 1996. The Court of Appeal cited with approval Langstaff J's comments when the case had been decided by the Employment Appeal Tribunal to the effect that Tribunals should avoid an artificial distinction between "information" on the one hand and "allegations" on the other. According to the Court of Appeal, in order for a statement to be a qualifying disclosure it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters in sub-section (1). Whether it meets that standard is something that Tribunals should evaluate in the light of all the facts of the case (including the particular context in which the disclosure was made). The Court of Appeal noted that the meaning of a statement, which is to be derived from its context, should be explained in the Claim Form and in the Claimant's evidence, so as to allow the Respondent a fair opportunity to dispute the context relied upon and / or that the statement could really be said to incorporate any part of the factual background.

20. In Kilraine, the Court of Appeal also considered whether the claim should have been struck out on the basis that Ms Kilraine had no real prospect of establishing that she had the requisite belief under the first limb of the two-stage test just referred to. The Court of Appeal concluded that the Tribunal was "plainly entitled" to conclude that she had no real prospect of success in circumstances where there was nothing in her case or Witness

Statement for the purposes of s.43B(1)(b) to suggest that she had a relevant legal obligation in mind at the material time.

21. Chesterton was concerned with the public interest element of s.43B. We refer in particular to Lord Justice Underhill's comments at paragraphs 27 to 31 of the Court's Judgment, in which he said that,

> *"The essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest".*

A disclosure does not cease to be in the public interest because it serves the private interests of a worker's colleagues. The question can only be answered by the Tribunal on a consideration of all the circumstances of the particular case.

22. As to whether or not the worker's belief about the nature of their disclosure is reasonably held, Lord Justice Underhill recognised that there can be more than one reasonable view as to whether a disclosure is in the public interest. Tribunals should be careful not to substitute their own view for that of the worker. The reasons why a worker considers their disclosure to be in the public interest is not particularly material. Lord Justice Underhill recognised that workers will often seek to justify their disclosure after the event by reference to things that were not in their head at the time of their disclosure. This is not to call into question the decision in Kilraine; the employee will still be expected to offer credible reasons as to why they believed, at the time, that the disclosure was in the public interest. Finally, motivation is not to be confused with belief.

23. In Ibrahim v HCA International Limited [2019] EWCA Civ.2007, the Court of Appeal again considered the public interest aspect of s.43B. The case was a little unusual because the Court of Appeal gave its Judgment in the Chesterton case after the Tribunal in Ibrahim had heard all the evidence but before it had decided the matter and given Judgment. There was some suggestion that Mr Ibrahim had been questioned at Tribunal as to whether contemporaneous emails and his Witness Statement made any mention of a public interest. However, the Court of Appeal said that in the light of Chesterton he should have been asked 'directly' whether at the time he made the disclosures he believed he was acting in the public interest. As appropriate, the Respondent could have put to Mr Ibrahim that this was nothing more than an afterthought on his part.

24. In Ibrahim, the Court of Appeal reiterated the point made in Chesterton, namely that motives are not to be confused with belief. A worker's motivation in making a disclosure will not determine the question whether they believed their disclosure to be in the public interest.

25. Babula concerned the second limb of the two-stage test. Once a worker establishes that they reasonably believed their disclosure to be in the public interest and to tend to show relevant wrongdoing, the fact their

belief turns out to be wrong or, in that particular case (which was brought with reference to sub-section (1)(a)) that it did not in Law amount to a criminal offence, does not of itself render the belief unreasonable. A whistleblower need not be right. As Lord Justice Wall observed:

> *"To expect employees on the factory floor or in shops and offices to have a detailed knowledge of the criminal Law sufficient to enable them to determine whether or not particular facts which they reasonably believe to be true are capable, as a matter of Law, of constituting a particular criminal offence seems to me both unrealistic and to work against the policy of the statute."*

The Tribunals Findings and Judgment on the Preliminary Issue

26. At the first Preliminary Hearing for Case Management on 5 December 2019, Employment Judge Johnson noted that the disclosures relied upon by the Claimant had been made after he had gone for a drink with Mr Rickwood on 21 September 2018. However, as we have noted already, he ordered the Claimant to provide further and better particulars in this regard.

27. At the most recent Preliminary Hearing before Employment Judge Moore on 19 April 2023, the Judge recorded once again, as did Employment Judge Laidler the previous year, that the disclosures relied upon all post-date the drinks on 21 September 2018. In his "Further and better particulars" email to Mr Dixon dated 20 December 2019 (pages B32 to B40), the Claimant refers to a conversation with Mr Latta the week commencing 1 October 2018 during which he relayed to Mr Latta what he had been told by Mr Rickwood when they met for a drink on 21 September 2018. He claims to have mentioned the same issues to Mr Latta a further three times that week. Otherwise, the Claimant relies upon two written disclosures to the Respondent, namely a written statement provided to Mrs Latta at her request on 30 October 2018, (pages E69 – E74), and a subsequent letter headed 'Complaint' dated 2 November 2018 addressed to Mrs Latta, but which we accept the Claimant handed to Mr Latta on the afternoon of 2 November 2018, (pages E83 – E88). We have read both documents in their entirety.

28. Although the Claimant does not seek within these proceedings to rely upon concerns raised by him earlier in 2018, within a short time of commencing with the Respondent as an agency worker, it is clear that within a relatively short time of starting work at the Respondent the Claimant felt that Mr Rickwood, and to a lesser extent Mr Strong, were making life needlessly difficult for him, that Mr Rickwood could be aggressive and uncooperative, and that this had resulted in the Claimant feeling excluded and undermined.

29. There is no suggestion by the Claimant that the difficulties he says he experienced during his initial weeks at the Respondent reflected others' experiences at that time. As described by the Claimant, the impression is

that he was being singled out as a 'newcomer' and/or agency worker, and that it was unpleasant and unwarranted, indeed small minded behaviour, particularly on the part of Mr Rickwood. We find that Mr Latta and Mr Francis sought to nip the issue in the bud by having a quiet word in Mr Rickwood's ear, rather than escalating the matter formally. Indeed, there is no obvious reason why they should have done so since the Claimant did not raise his concerns by way of a formal grievance.

30. What is relevant, we find, is that Mr Latta and Mr Francis acted on the Claimant's concerns, even if the Claimant is now dissatisfied with their approach. If they were of a mind to cover up wrongdoing and to act against those who spoke up and raised concerns, it seems to us unlikely that they would have gone on to offer the Claimant permanent employment with the Respondent; it would have been a simple matter for them to ask the Claimant's agency to remove him and supply another, more compliant, worker in his place.

31. We accept the Claimant's evidence that he disclosed aspects of what he had been told by Mr Rickwood on 21 September 2018 to Mr Latta, and indeed to Mr Francis, during the week commencing 1 October 2018.

32. As regards the Claimant's written statement of 30 October 2018, this was provided by him to Mrs Latta in the context of her investigation into the events of 19 October 2018, her investigation initially being focused upon Mr Rickwood's conduct on that day.

33. We think it striking that the Claimant made no mention in his statement of 30 October 2018 that, on 19 October 2018, two portable toilets had fallen from the trailer he was towing, onto the highway, whilst he was travelling at a speed of just over 40mph. It was a serious and troubling omission on his part, one which calls into question whether he was open and transparent with Mrs Latta about what transpired on 19 October 2023. In our judgment, the fact he withheld details of such a potentially serious road traffic incident from her, and indeed the Respondent, undermines his claim to have made other disclosures within his statement pertaining to health and safety. If he had health and safety concerns in mind, we consider that he would have disclosed to Mrs Latta that he had lost two portable toilets from the back of his trailer, particularly if he believed Mr Rickwood had some culpability in the matter. Indeed, he would not have delayed in disclosing the matter, on the contrary he surely would have alerted the Respondent to the matter as soon as the highway had been made safe on 19 October 2018 or, at the very latest, when he returned to the depot later than day or early the following morning. Instead, eleven days later, he continued to withhold all details of the incident notwithstanding he had been asked by Mrs Latta to provide an account of the events of that day. The CCTV extracts shown to the Tribunal clearly evidence other vehicles passing the vehicle driven by the Claimant, on the other side of the road in the opposite direction in the fading light, within moments of the second portable toilet crashing into the road, where it lay in the road blocking the highway and presenting an obvious, serious hazard to oncoming traffic. It

is entirely fortuitous that the toilet did not fall from the trailer into the path of an oncoming vehicle with potentially serious consequences.

34. Be that as it may, we conclude that the Claimant's statement of 30 October 2018, together with his disclosures to Mr Latta and Mr Francis during the week commencing 1 October 2018, were disclosures that, in the words of Lord Justice Underhill in Chesterton, served the Claimant's private interests rather than any public interest. They were fundamentally and solely concerned with advancing the Claimant's personal views in relation to Mr Rickwood, including how Mr Rickwood was alleged by the Claimant to have behaved towards him over the course of 19 and 20 October 2018 (whilst omitting any mention of the incident with the toilets). In our judgment, it was the continued personal expression by the Claimant of his poor regard for Mr Rickwood, a view which had taken hold in his initial weeks working at the Respondent and which had been reinforced during his time at the company, including as a result of what Mr Rickwood had disclosed to him on 21 September 2018. In his statement of 30 October 2018, the Claimant sought to rely upon how Mr Rickwood had allegedly spoken to his colleague Lisa as corroborating what he was saying about his own treatment at the hands of Mr Rickwood. His statement concluded,

> *"I have lost all trust and respect for R. What R brings to the table work wise, he also negates with his attitude and behaviour."* (page E74)

There was no mention by the Claimant of any health and safety concerns, whether for himself or for others.

35. Mrs Latta's notes of her investigation meeting with the Claimant on 31 October 2018 confirm that the Claimant re-iterated many of the points made in his statement. He referred to Mr Rickwood's alleged addictions and failure to take medication recommended to treat his mental health. We find this was in order to illustrate the points he had been making to Mrs Latta regarding Mr Rickwood's alleged behaviour towards him on 19 October 2018, rather than because he believed he was acting in the public interest or had health and safety issues in mind. He was seeking to portray Mr Rickwood in a negative light and to contrast this with his own conduct as an employee, in circumstances where he knew, but Mrs Latta did not then know, that he had been involved in a potentially serious road traffic incident some 12 or so days earlier. To the same end, we find his disclosure to Mrs Latta on 31 October 2018 that he believed the straps holding the tank on his vehicle had come loose in July, or possibly August 2018, and that Mr Rickwood may have tampered with them, was intended by him to reinforce the impression that Mr Rickwood was unpredictable and inclined to behave badly towards the Claimant.

36. In summary, we conclude that whether of itself, or in combination with his concerns earlier in the year, or additional comments to Mrs Latta on 31 October 2018, the statement of 30 October 2018, reiterated and expanded upon on 31 October 2018, was not a qualifying disclosure. At no time did

the Claimant believe that he was making a disclosure in the public interest. Instead, he was solely concerned with his personal interests in the matter.

37. What then of the letter dated 2 November 2018, whether of itself, or in combination with any previous communications of his? Firstly, we find that whatever was said by the Claimant to Mr Latta and Mr Francis in the aftermath of his drinks with Mr Rickwood on 21 September 2018, this did not extend beyond what the Claimant wrote in his letter of 2 November 2018. As with his 30 October 2018 statement, we conclude that the letter of 2 November 2018 was not a qualifying disclosure within the meaning of s.43B ERA 1996. Unlike his statement, the Claimant's letter was not limited to the events of 19 and 20 October 2018, but instead addressed events over the entire period that the Claimant had worked for the Respondent. His letter started with a numbered, or as he said bullet point summary, of his concerns, relating to what he said was,

> *"treatment against myself from R and Peter Strong."* (page E83)

Those opening comments set the scene in terms of what follows and reflect the Claimant's strong personal sense of grievance in the matter.

38. In his letter, the Claimant went on to make complaint about,

> *"…bouts of not talking to me"*;
>
> *"…trying to make my life difficult"*;
>
> *"…putting myself a hostile environment"*; and
>
> *"…sabotage of my vehicle"*;

(the Tribunal's emphasis). These were complaints or grievances about how the Claimant had been treated by Mr Rickwood and Mr Strong which did not serve any wider public interest, or evidence that the Claimant had in mind health and safety concerns, or other relevant breaches identified in s.43B ERA 1996.

39. We do not regard the Claimant's brief reference in his letter to Mr Rickwood having lost his driving licence and having allegedly assaulted another colleague as other than an attempt on the Claimant's part to press home that Mr Rickwood was a man of poor character and that the Claimant's account of events should be preferred.

40. Towards the end of his letter of 2 November 2018, the Claimant wrote,

> *"If things remain as they do, I cannot see me at Latta in the future."*

We conclude that he wanted action taken to address his concerns so that he might remain with the Respondent; he was not asking that action be taken to protect others or to address health and safety issues, whether

relating to colleagues, clients, members of the public or others who might be impacted by the Respondent's operations. Once again, he did not believe, indeed we find did not even consider, that he was making a disclosure in the public interest. Instead, he was solely concerned with his personal interests in the matter

41. Given our conclusions, the Claimant's complaint that he was automatically unfairly dismissed cannot succeed since he had not in fact made any qualifying disclosures when he was dismissed and therefore cannot have been dismissed because he made such any such disclosure.

42. For the avoidance of doubt, we would have said in any event, that the Claimant was not dismissed because of any disclosures or information he made or provided to the Respondent in the days or weeks after he went for a drink with Mr Rickwood on 21 September 2018. As we have noted already, he was made a permanent employee in spite of having raised concerns about Mr Rickwood and Mr Strong with Mr Latta and Mr Francis. Towards the end of Mr Latta's evidence he cut to the heart of the matter. He said, and we accept, that he could not have continued trust in the Claimant given the Claimant's failure firstly to disclose to him that the portable toilets had fallen from the back of the trailer onto the highway on 19 October 2018 and secondly, and perhaps more significantly, given the Claimant continued to withhold what had happened from both himself and his wife when specifically asked by them how the toilets might have come to be damaged. We hesitate to question a party's honesty or credibility, but at the very least the Claimant was not open and transparent with Mr and Mrs Latta regarding an incident about which they should have been made aware at the earliest possible opportunity.

43. The evidence as to the Claimant's lack of openness and transparency is compelling, including as it does, not just Mrs Latta's notes of her investigation meeting with the Claimant on 31 October 2018, but more significantly the Claimant's own statement of 30 October 2018 which, over the course of six pages, makes no reference whatever to a serious incident in an otherwise detailed narrative of the events of 19 October 2018.

44. Turning then to the second aspect of the claim, namely the alleged threats and intimidation directed at the Claimant in 2019 by Mr Rickwood, Mr Strong and Mr Lindsey Edgely.

45. Section 47B(1)(a) of ERA 1996 provides that a worker has the right not to be subjected to any detriment by any act done by another worker,

> "…in the course of that other worker's employment on the grounds that the worker made a protected disclosure".

46. As we emphasised to the Claimant before inviting the parties' closing submissions, the Tribunal would need to be satisfied that Messrs. Rickwood, Strong and Edgely, threatened and intimidated the Claimant,

i.e. subjected him to detriment, in the course of their employment with the Respondent. In order for the complaint to succeed, it is not sufficient for the Claimant to merely establish that they were employed by the Respondent at the time of the conduct complained of; the conduct must have occurred in the course of employment.

47. On the Claimant's case, the three individuals clocked off work at the end of the day on 27 February 2019 and drove to Downham Market in their own vehicles where they approached him and verbally abused him. If true, they were evidently acting in their own time. Whilst it may have related to issues that had arisen in the workplace, that is the extent of the connection with their work. If the Claimant was abused as he alleges, this did not happen during working time when the three alleged perpetrators were being paid by the Respondent, or using the Respondent's vehicles or equipment to further their aims. It is not suggested by the Claimant, and certainly none of the Respondent's witnesses were questioned by him on the basis, that they were acting on the Respondent's instructions or with its tacit support or encouragement, or even knowledge.

48. For these reasons alone, the claim cannot succeed; there is no evidence before the Tribunal from which we might properly conclude that the three alleged perpetrators were acting in the course of their employment. In any event, we would have said that the Claimant has failed to discharge his burden of proof in the matter. These are particularly serious allegations. Whether or not the Claimant's life was threatened as he suggests, he is alleging that he was effectively warned off pursuing matters further. Whilst we were singularly unimpressed by Mr Strong, whose conduct at the witness table was cocky and arrogant, nevertheless, for whatever reason (though perhaps as a result of his inexperience in the matter), the Claimant failed to question Mr Rickwood about the alleged events of 27 February 2019, notwithstanding it was Mr Rickwood who allegedly made a sign to signify a throat being cut. Moreover, there is an unresolved conflict as to the date of the alleged incident. The Claimant says it occurred on 27 February 2019, but PC Dykstra recorded it as having allegedly taken place on 1 March 2019, which was also the date noted by Employment Judge Johnson in 2019. The alleged date of 27 February 2019 was only subsequently fixed upon by the Claimant at the Preliminary Hearing earlier this year before Employment Judge Moore. This confusion has inevitably introduced an element of doubt in our minds, in circumstances where we are effectively being invited by the Claimant to find criminal wrongdoing on the part of Messrs Rickwood, Strong and Edgely. The Respondent, or at least Mr Strong, prepared its, or his, evidence on the basis that the relevant date was 1 March 2019. Whilst it might have been a relatively simple matter for Mr Strong to produce his vehicle log book to clarify whether or not, as the Claimant asserts, he was driving a black Ford Fiesta at the time, and reiterating as we say that he was not an impressive witness, given the serious nature of the allegations, we apply the burden of proof strictly in the matter. The Claimant has failed to discharge his burden on the balance of probabilities, even if we do not make any positive finding exonerating Messrs. Rickwood, Strong and Edgely of wrongdoing.

49. For all these reasons, the Claimant's claims that he was automatically unfairly dismissed and subjected to detriment as a whistle blower, do not succeed and shall be dismissed.

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Employment Judge Tynan

Date: …29 November 2023…….

Sent to the parties on: 12/12/2023

N Gotecha

For the Tribunal Office.