EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs J Sturm	v	Disability Initiative Services Limited

Heard at: Reading (by Cloud Video Platform)

On: 19—21 April 2023

Before: Employment Judge T Brown (sitting alone)

Appearances

For the Claimant: In person
For the Respondent: Mr G Bignell, trustee

REASONS FOR JUDGMENT

Background

1. The Respondent is a charity providing specialist slow stream rehabilitation for adults with acquired physical disabilities and brain injuries, operating at premises in Surrey, Hampshire and Berkshire. It presently employs approximately 18 staff in addition to 20 Sessional Specialists and engages 14 volunteers.

2. The Claimant was employed by the Respondent from 16 October 2018 to the date in August 2020 when notice, which had been served upon her in July, expired. There is a dispute about precisely when in July the notice was effectively served, but that is ultimately not decisive to the claims that I have to decide, for reasons which I will come to.

3. On 25 September 2020 following ACAS Early Conciliation between 24 August 2020 and 7 September 2020, the Claimant presented this claim to the Employment Tribunals complaining that she had been unfairly dismissed, and that she was owed sick pay, notice pay and holiday pay. By a Response dated 18 November 2020, the Respondent – then described as 'Disability Initiative Limited', albeit that ACAS Early Conciliation had proceeded in the name 'Disability Initiative Services Limited' – resisted the claim.

4. Since there is no dispute that the Claimant did not have two years' continuous employment at the effective date of termination of her employment, whenever that date precisely was, it was not immediately apparent from the Claim Form on what basis the complaint of unfair dismissal was pursued, although, in the final paragraph of the claim the Claimant had said that she thought that the reason for the termination of her employment was because the Chief Executive Officer had found out that she was "*considering* whistle blowing" in circumstances where she had "naively spoken with someone connected to" the Respondent about "very grave concerns" "which would explain the completely unprofessional manner in which [she had] been treated".

5. Ahead of a Preliminary Hearing in March 2021, the Claimant provided further information, alleging that she had made certain protected disclosures in January 2020. Following a section in the document that she provided 'Whistle Blowing request for further information', headed 'Background', the Claimant set out details of disclosures she claimed to have made to a colleague Mrs Hall in January 2020.

6. The disclosures were detailed under the heading, 'Details of Disclosures' between pages 29 and 33 of the Hearing Bundle that I have used and the Claimant said that in addition complaining that her dismissal had been because of making those disclosures, she was also complaining that she had been taken off furlough and that the Respondent had refused to provide confirmation of her dates and position because of disclosures that she had made.

7. A Case Management Hearing then took place before Employment Judge Anstis sitting alone on 9 April 2021. He noted in his Case Management Summary the disclosures to have been, or related to, overpayment on a lighting contract due to a conflict of interest, the working by Mrs Brown (the CEO) at weekends simply to claim petrol expenses, the claiming by Mrs Brown of overtime for *"ridiculous tasks carried out at weekends"* and a failure by Mrs Brown to declare a conflict of interest when the Respondent considered buying a house in Fleet. Judge Anstis noted at paragraph 7 of his Case Manage Orders (page 40 of the Hearing Bundle) the Claimant saying that those disclosures had led to her dismissal and the initial refusal of the Respondent to provide confirmation of her employment dates and position within the company, was said to be an unlawful detriment under s.47B of the Employment Rights Act 1996.

8. Notably, there was reference in the background section of the document the Claimant had provided to a trustee, JV, but this was not included under the heading 'Details of Disclosures', nor was it included in Employment Judge Anstis' identification of the protected disclosures. Nor had that been specifically included as a claimed disclosure in the ET1.

9. The Final Hearing was originally listed for May 2022 but was postponed ultimately to April 2023. It took place before me by Cloud Video Platform. I had an agreed Bundle totalling 162 printed pages, plus insertions so that

the Bundle was longer than 162 pages, but the final printed page number was 162.

10. I heard oral evidence from the Claimant and, pursuant to Witness Orders which had been issued by the Tribunal for Mrs Hall and Mr Ricketts; the latter of whom had been unable to attend the Hearing on 19 or 20 April but gave evidence by CVP on the morning of 21 April 2023, as part of the Claimant's case but formally after the close of the Respondent's case. For the Respondent I heard evidence from Mrs Brown the Chief Executive Officer of Disability Initiative, from Amanda Tye, the Operations Manager, from Claire Dawson, Financial Controller, and from Carrie Morrison, currently Operations Administrator.

11. The Claimant's complaint for unpaid holiday pay was not pursued by her beyond her oral evidence because she accepted in evidence and thereafter, that she had been paid the correct amount in respect of her leave entitlement for the final leave year in which she worked. At the date of the termination of her employment she had in fact been slightly *overpaid* in respect of leave and therefore the sum was debited from her final pay. Her complaint was that the deduction that had been made from her final pay for 7 hours and 15 minutes appeared petty in the circumstances, but she accepted and indeed argued that this was essentially a moral complaint rather than a legal one. Her complaint that she was owed notice pay was also a moral complaint rather than a legal complaint because she accepted that on whichever day her last day of employment fell, it had been a weekend day, that payment was made in respect of week days only or computed by the Respondent in respect of week days only and that the Claimant had been paid up to and including the last week day within her period of notice. Therefore this claim also did not give rise to any money claim.

12. There remained, however, a dispute about a deduction from the Claimant's salary in April 2020 of £110.78, a duplicate deduction having been made also in May 2020, but re-credited.

Findings of Fact

13. I made the following findings of fact on the balance of probabilities. Since the Claimant did not have two years' continuous employment, she bore the legal burden of proving an automatically unfair reason for her dismissal, but in respect of any particular fact the party asserting that fact as part of their case bore the burden of proving it, in any case on the balance of probabilities. Further, the respondent bears the burden of proving a lawful reason for any treatment alleged to be detrimental (other than dismissal).

14. The Claimant had begun working for Disability Initiative as a temp through an agency. Her evidence was that she had not felt comfortable there and when she initially left she did not expect to return. It is difficult to assess to what extent the Claimant's subsequent experiences, in particular during the last period of her employment, have coloured her perceptions of the

earlier part of her employment. But taken at face value the Claimant's evidence is of a working environment which she never found conducive and in which she witnesses other people being treated poorly.

15. I have concluded that I do not need to make detailed findings about each of the background incidents on which the Claimant relies, but I note that the unchallenged evidence of an agency worker, Harpreet Babbra, was to the effect that she had had a difficult working relationship with Mrs Brown and that her employment had, in her opinion, been terminated peremptorily.

16. I observe that substantial evidence (as here) of widespread poor behaviour by leaders in an organisation in relation to many employees often tends to suggest the absence of ulterior motives for any particular instance of poor behaviour to a particular employee. In other words, it is evidence of indiscriminate poor management behaviour. While I find that there is likely to be more detail and nuance to the circumstances of other employees' treatment than it is possible to resolve, or indeed proportionate to resolve, in a three day hearing by me, for reasons that I will come to I consider that there were likely some difficulties with Mrs Brown's management abilities which led to the dissatisfaction of employees and difficult working relationships, having regard to the facts that several of the witnesses, whether live witnesses or witnesses whose evidence was not challenged, have spoken to such dissatisfaction during the course of this hearing.

17. Shortly after beginning her employment, with effect from 29 October 2018, the Claimant's working hours were increased from 16.5 hours to 30 hours. It appears to be the case that however cordial it appeared on its surface, Mrs Sturm did not hold Mrs Brown in high regard, but Mrs Sturm did not leave the Respondent and she raised no complaints about it. Had the working environment been quite as toxic as it is now characterised, one might expect Mrs Sturm to have looked for and secured alternative employment as an experienced Personal Assistant used to working in blue chip environments, hence my finding that it is likely that later events have coloured Mrs Sturm's perception of earlier ones to an extent which makes it difficult to make reliable findings of fact on matters of behaviour which likely involved nuance and context.

18. There was no real dispute that in January 2020 a conversation took place between Mrs Sturm and Mrs Hall in Mrs Hall's office. Mrs Sturm took to the office when she went, I find as a fact, an invoice for a substantial amount relating to the replacement of lighting on the floor of one of the Respondent's facilities. Mrs Sturm was surprised at the amount of the invoice and the absence of alternative quotations.

19. Mrs Hall's evidence was that at this stage Mrs Sturm had yet to discuss the quotation and its significance with her husband as she, I find, did at some stage, and that Mrs Sturm did not then know that one of the contractors working on the project was related to Mrs Brown. Mrs Sturm's

own evidence in chief does not detail the dates on which particular facts came to her attention and were disclosed by her, which is the key to any whistleblowing complaint.

20. Since Mrs Sturm went to the January meeting with a copy of the invoice, I accept that it was a matter of real concern that she was bringing to Mrs Hall. But I am not satisfied on the basis of the evidence that I have received that at this stage Mrs Sturm knew or disclosed to Mrs Hall, the fact of the three invoices, that they were higher than seemed appropriate for this type of work having discussed the matter with her husband, or the nature of the relationship between Mrs Brown and one of the contractors. Indeed, it seems from Mrs Sturm's own evidence that the relationship between Mrs Brown and a contractor was revealed to Mrs Sturm some time later by Mrs Brown herself. I accept, therefore, that Mrs Sturm had concerns about the amount of the invoice and expressed these to Mrs Hall.

21. Since this led to other enquiries after the meeting, as at the date of the meeting I am not satisfied on the balance of probabilities that Mrs Sturm believed that there had been a breach of a legal obligation, or that if she did hold such a belief that it was a reasonable belief where there were further enquiries to be made to understand the situation.

22. However, I am satisfied that Mrs Sturm believed that she was bringing a serious concern about spending by a charity to a more senior employee and that Mrs Hall appreciated that.

23. Mrs Hall's evidence was that at the same meeting, she rather than Mrs Sturm, had raised the issue of Mrs Brown's attempts to encourage the Board of the charity to purchase a property next to the charity's new facility in Fleet, which was owned by a family member of Mrs Brown. There had been a discussion between Mrs Hall and Mrs Sturm about this. Mrs Sturm said that there had been a discussion with Mrs Hall during which both had expressed concern and surprise; that was part of her evidence in chief. In my judgement this tends to suggest and I find as a fact, in light of all of the evidence, that the topic had been raised by Mrs Hall but may have been known by and discussed between both Mrs Hall and Mrs Sturm. I am satisfied that Mrs Sturm believed it to be wrong for Mrs Brown to be seeking to persuade the Board to buy a property where she was known (and indeed related) to its vendor, but I am not satisfied that Mrs Sturm herself disclosed facts tending to show this to Mrs Hall, or was bringing such facts to the attention of Mrs Hall when it was Mrs Hall herself who was raising this with Mrs Sturm.

24. Mrs Sturm says that two other matters at least were discussed at this meeting. Firstly, Mrs Brown's claiming of petrol for going to the Respondent's premises at weekends and secondly, Mrs Brown carrying out menial work at the weekends. Mrs Hall disputed in evidence that these matters had been raised.

25. In my judgement it is quite possible that Mrs Sturm raised these matters during the conversation, but that Mrs Hall did not remember them being raised. Mrs Hall characterised the meeting as a gossiping session and while Mrs Sturm has satisfied me that the meeting began differently and in a rather more structured and formal way, I find in light of all of the evidence and the circumstances, some of which I will come to, that it is likely that it descended into something of a gossiping and griping session, as part of which it is quite possible that Mrs Sturm raised issues that Mrs Hall no longer remembers. Therefore I accept the evidence of both Mrs Hall and Mrs Sturm on what they remember of the meeting.

26. However, it follows, and I find, that these matters do not appear to have struck Mrs Hall, or remained in her mind.

27. A further issue was raised and addressed quite extensively in evidence concerning a member of the Board of Trustees and Acting Treasurer, whom the Claimant alleges had been identified by Mrs Brown as somebody who Mrs Brown was concerned was showing signs of early onset dementia. This is not a matter that was identified by Employment Judge Anstis as a potential protected disclosure and in light of the way the evidence emerged, it seems to me that on any view it could not constitute disclosure of information by Mrs Sturm which satisfied the requirements of the definition of a qualifying disclosure within the meaning of the relevant provisions of the Employment Rights Act 1996.

28. In all of those circumstances, in addition to the conclusions I have reached about who knew what, I have not found it necessary to make detailed findings about what was said or believed by anybody in relation to the Acting Treasurer.

29. What is also notable, in my judgement, is that following the meeting in January 2020 between the Claimant and Mrs Hall, no further steps were taken by Mrs Sturm to follow them up in a formal or escalatory way. Mrs Sturm did not blow the whistle under the Respondent's Whistle Blowing Policy, or take her concerns, or any of them, to any of the trustees, either informally or confidentially, nor did she take any of her concerns outside of the organisation to the Charity Commissioners or others, or formalise them in any other way. She had not done so at any time between the January meeting and March 2020, or indeed any time immediately after March 2020.

30. In my judgement, had they been matters of real concern to Mrs Sturm and concern in a public interest context, it is likely that she would have not left those matters as they stood at the end of the January 2020 meeting. This tends to support, in my judgement, Mrs Hall's ultimate characterisation of that meeting and its nature as more of a gossiping session than a meeting to which Mrs Sturm was bringing concerns for advice about how she should proceed and then following any advice given.

31. Mrs Sturm received an entirely positive appraisal later in 2020.

32. By mid-March 2020 the world had been transformed by the Covid-19 pandemic. On 17 March 2020 the Claimant was asked to pick her son up from school because he was showing signs of a persistent cough. Mrs Brown required the Claimant not to come into work as a result of that; the Respondent had vulnerable clients and in my judgement it is understandable why Mrs Brown did not want to take any chances. At this time there was no legal requirement to self-isolate if one was a family member of a person with suspected Covid-19 as subsequently was introduced. But there was guidance which did not have the force of law to the effect that people should not circulate if they had been in close contact with somebody suspected of having Covid-19. Therefore there was no legal impediment, certainly insofar as regulations made under the Public Health Act are concerned on Mrs Sturm attending work, but in my judgement it was a reasonable requirement for the Respondent to ask Mrs Sturm to stay away to protect others. Even when Mrs Sturm's son felt better, about two days later, in my judgement it was reasonable of Mrs Brown to maintain the requirement that Mrs Sturm stay away because there were real concerns about the risks of asymptomatic transmission of Covid-19 and other broader uncertainties about the disease at that time.

33. However, I am satisfied that Mrs Sturm offered to continue working from home. She herself was not in any way sick. She was not saying that she was unable to work as a result of sickness, to the contrary. Therefore Mrs Sturm was saying she was ready, willing and able to work, but the Respondent through the reasonable decision of Mrs Brown was preventing her from coming into work, or indeed working from home. I accept Mrs Sturm's evidence that she offered to work from home. I have no evidence as to why Mrs Sturm could not work from home. Mrs Sturm was paid sick pay for this absence from work, although as I have observed, she was not in fact sick and because she had exhausted the limited normal sick pay payable under her contract, she was paid at a reduced rate of pay leading to a reduction in pay of £110.78. I will return to the consequences of that in my conclusions.

34. In an email to the trustees on 20 March 2020, Mrs Brown described the Claimant's PA role as "the most dispensable" position with the organisation. She said that Mrs Sturm's hours had been reduced from 30 to 5, as it happened, on 17 March 2020.

35. That reduction in hours was due to take effect from 31 March 2020. Mrs Sturm was notified of this before the Furlough Scheme had been formalised and introduced by the Government and on the introduction of the Furlough Scheme a few days later, Mrs Sturm suggested that she could be furloughed while carrying on working her usual hours. This would not have been lawful and would have been a fraud, although I accept that Mrs Sturm may not have appreciated this at the time that she proposed it. Mrs Brown declined to allow Mrs Sturm to be furloughed, but to carry on working and Mrs Sturm was furloughed with effect from 27 March 2020 on the basis of her full hours.

36. On 21 April 2020, in a text message, Mrs Sturm said to Mrs Hall that she had said to her husband that she would not be surprised if she was made redundant and then asked to go back months later, when things were better, for a Royal visit. I accept Mrs Sturm's evidence that this was said jovially as an expression of frustration with Mrs Brown's ways of working, but I find that Mrs Sturm was serious when she went on to say in that same message that she was not expecting any employee loyalty over and above Government assistance.

37. Mrs Brown and Mrs Sturm exchanged entirely cordial text messages during this period.

38. There are records in evidence of conversations between Mrs Brown and Croner Consulting, a well known Human Resources Consultancy, which in my judgement are evidence that from the middle of May 2020 Mrs Brown was considering the dismissal of Mrs Sturm as redundant. In a record of a call from, or certainly created on, 12 May 2020, Mrs Brown is recorded as having explained that the redundancy situation which had been identified concerned a unique role, namely the Claimant's PA role that there had been a former PA, Miss Morrison, who was now a separate Administrator, and that Mrs Brown could not see any alternative roles for the Claimant. There was a reference to whether or not there might be issues of age discrimination. Mrs Brown is recorded as saying that the PA, that is the Claimant, was more qualified and experienced but that lots of her work could be absorbed by Mrs Brown and that the charity had needed to redesign the service to focus on front line key workers and there was no alternative work.

39. There is a record that advice was given and that Mrs Sturm had less than two years' continuous employment, but there were no clear complaints of discrimination or automatically unfair dismissal on the facts and that it would be possible to leave Mrs Sturm on furlough but that there would be a particular risk were the Claimant to be employed for over two years and therefore acquire the general right not to be unfairly dismissed.

40. A further conversation took place between Mrs Brown and Croner on 16 June 2020 and again, there are notes of that conversation at page 83a of the Bundle. Those show Mrs Brown saying that there had been a serious downturn of work with very limited work available, that Mrs Sturm remained on furlough but nothing had been done since the last conversation or discussion because Mrs Sturm's brother had been hospitalised with Covid-19. The advice that was given was for there to be a mini redundancy consultation and to leave Mrs Sturm on furlough and review the situation again, keeping an eye on the time by which Mrs Sturm would acquire two years' service, because that would also be the point at which she would be entitled to a statutory redundancy payment.

41. There is no suggestion from the notes on page 83a that Mrs Sturm had blown the whistle, or was suspected by Mrs Brown of having blown the whistle. In each of these notes it is apparent that the desirability, insofar

as the advisor was concerned, of avoiding Mrs Sturm acquiring two years' continuous employment, was identified. In my judgement that is something which is often identified by employers when considering the risks associated with redundancies or other situations. It is in my judgement relatively unremarkable and not good evidence of an ulterior motive for dismissal.

42. There is no dispute that a telephone call took place on 18 June 2020 between Mrs Brown and Mrs Sturm. This was not a formal redundancy consultation meeting; I find that it was a relatively informal call. There was no written communication following it to suggest any risk of redundancy or imminent dismissal, although I do accept the evidence that Mrs Brown was working very long hours in the difficult circumstances of the pandemic. There were very serious pressures on her time.

43. I am satisfied that Mrs Brown believed that in this call she had appropriately warned Mrs Sturm about the risk to her future job. I am also satisfied that this had not struck Mrs Sturm from the conversation, and that objectively viewed a bystander would not have taken from this call that Mrs Sturm was at risk of dismissal. Mrs Sturm had written by text message to Mrs Hall, at page 86 of the Bundle, in which she had said that at the 18 June 2020 meeting there had been nothing major and that she would have to reduce her hours according to the terms of the Handbook, but would receive further information in mid-July 2020.

44. Mrs Brown had spoken to Croner two days before the 18 June 2020 call when she had been advised to do a mini consultation and I am satisfied that this was fresh advice in Mrs Brown's mind. Even on Mrs Brown's evidence, she was not saying to Mrs Sturm on 18 June 2020 that Mrs Sturm was redundant, only that the matter would be reviewed in July 2020. This is something which in my judgement suggests some further consideration or discussion. I am satisfied that Mrs Sturm did not believe and had no good reason to believe, that the next communication that she would receive from the Respondent would be a written notice of the termination of her employment.

45. Mrs Hall's evidence was that she had not revealed the factual contents of the January 2020 discussion to anybody at the Respondent, other than of course to the Claimant. There was no direct positive evidence to the effect that the conversation had been revealed.

46. Shortly after the Claimant's dismissal, the Claimant's evidence which I accept, is that Mrs Hall had contacted her to say that she, Mrs Hall, had probably "said more than [she] should" and Mrs Sturm suggested that this must have been a reference to the matters discussed in January 2020. However, Mrs Hall's evidence was that she was referring to the belief that Mrs Sturm would not be returning to work for the Respondent, which she admits she had revealed to Mrs Brown at a meeting on 21 July 2020.

47. I am not satisfied that Mrs Hall, in saying to the Claimant that she had probably said more than she should, was admitting to revealing the January 2020 disclosures, or any of them, to Mrs Brown. The conversation had been in January 2020 and nothing of note had happened after that in relation to the matters discussed then, whereas there had been more recent communications between Mrs Hall and Mrs Sturm about whether Mrs Sturm would return to work for the Respondent.

48. Prior to 21 July 2020, I find that Mrs Brown had decided to dismiss Mrs Sturm as redundant and with advice from Croner, a letter had been written to that effect with the particular administrative involvement of Carrie Morrison. It was sent by post and email on 21 July 2020. It follows that a decision to dismiss Mrs Sturm had been made before the meeting between Mrs Brown and Mrs Hall on 21 July 2020 which was also attended by Amanda Tye. At the 21 July 2020 meeting, Mrs Brown asked Mrs Hall if she had been in touch with Mrs Sturm and how Mrs Sturm was. Mrs Hall volunteered that she did not think that Mrs Sturm would be returning to work for the Respondent (because the claimant had said as much) and Mrs Brown then instructed Carrie Morrison to send the notice of dismissal to Mrs Sturm by post and email.

49. The witness accounts of the three attendees at that meeting, Mrs Brown, Mrs Hall, and Miss Tye, are not entirely reconcilable but I accept that each of the three is seeking to remember what happened at the meeting some time after the event and it was not a meeting that was recorded or minuted. I do not consider that I can properly draw inferences from the differences between the three accounts, that there was in fact a discussion of the January 2020 conversation between Mrs Sturm and Mrs Hall at that July 2020 meeting. Indeed, it might be suspicious if the three attendees' memories were too well aligned. In any event, I have been satisfied that Mrs Brown's decision to make Mrs Sturm redundant had been reached some time before the meeting began, even if the precise timing of the communication of that decision to Mrs Sturm had yet to be decided on.

50. I am satisfied that the decision to make Mrs Sturm redundant was a legitimate decision, so that I cannot safely draw any inference from the rationality, or legitimacy of the decision: while Carrie Morrison also carried out administrative duties and as a matter of law had shorter continuous employment than the Claimant, having returned to work as an employee at the Respondent in 2019, her overall involvement with the Respondent had been longer, about some eight years; she was established in a different role to the Claimant in an operations administrative role this time, and in my judgement there was no obligation on the Respondent to consider a job share between the Claimant and Miss Morrison, nor to have bumped the Claimant into Miss Morrison's role. But that role had, in any event, seen a substantial reduction in hours by this time. It would have been legitimate for the Respondent therefore to dismiss Mrs Sturm without pooling her with other administrative staff. Therefore I do not accept that the Respondents approach to the redundancy situation was capricious, irrational, perverse, unreasonable or in some other way a decision which is

suspicious, so that I can draw an inference from it that it was not the real reason for dismissal. And I am not concerned with the general reasonableness or fairness of the decision, only whether the principal reason was not redundancy.

51. I have also already noted that at the time of her dismissal, Mrs Sturm did not have the general statutory right not to be unfairly dismissed and so as a matter of law, was not entitled to the benefit of a fair process. However, it was in my judgement inhumane of Mrs Brown to communicate the decision to dismiss Mrs Sturm as she did and this is one example of what in my judgement constituted poor leadership. Mrs Sturm had worked loyally and well for the Respondent for quite a long time, even if not for the two years necessary to acquire the general right not to be unfairly dismissed and was being dismissed in the midst of an entirely unprecedented global pandemic. Mrs Sturm was to lose her job, she was the only person in the organisation being made redundant and so Mrs Brown was not having to manage a large scale redundancy process which made a meeting with Mrs Sturm or a call to her impracticable.

52. Evidently, Mrs Brown found time to meet with Mrs Hall in person on 21 July 2020 and no good reason has been advanced, in my judgement, why Mrs Brown could not and should not as a matter of basic decency have found some time to meet with Mrs Sturm and tell her that her proposal was to end Mrs Sturm's employment in a way which at least acknowledged Mrs Sturm's loyal service and did not amount to a bolt from the blue.

53. However, the failure to do that, a failure which very clearly and understandably distressed Mrs Sturm, is in my judgement a moral (and employee relations) failing, and not a legal failing because, as I have said, Mrs Sturm had no statutory or other legal right to a particular form of redundancy process or any process. Since I have concluded that Mrs Brown did not know about the discussion between Mrs Sturm and Mrs Hall in January 2020, this cannot have played (and I find did not play) any part in the decision to dismiss Mrs Sturm.

54. It follows, in my judgement, that Mrs Sturm's dismissal was not because of anything that she had said in January 2020, even if anything that had been said constituted a protected disclosure.

55. However, Mrs Sturm's resulting sense of grievance at the way that she had been treated was, in my judgement, quite understandable and had Mrs Brown handled the situation differently and more effectively, there is in my judgement every chance that these proceedings could have been avoided. They are a good illustration of why following at least basic principles of fairness and decency, even when an employee has under two years' service, is so important.

56. Mrs Sturm's reaction to the situation thereafter, however, was not one likely to encourage engagement with her concerns and which I find escalated significantly. Rather that reaction was likely to encourage

defensiveness by an organisation whose ultimate leadership were trustees and therefore volunteers. Mrs Sturm did not suggest in the communications at this time that she had been dismissed because of her conversation with Mrs Hall in January 2020, nor did she now reveal the substance of those concerns to Mr Ricketts (one of the trustees) whom she contacted.

57. However, again, Mr Ricketts, especially with the background in personnel which he had, ought to have appreciated that given the way in which Mrs Sturm's employment had ended, referring Mrs Sturm back to Mrs Brown, especially when Mrs Brown considered and expressed the matter to be closed, was unlikely to prove a helpful way to resolve the situation. I find that even though Mrs Sturm did not have two years' continuous employment, she ought as a matter of good industrial practice to have been offered a right of appeal against her dismissal as redundant. So I understand why it was that Mrs Sturm felt so frustrated, but this does not make her dismissal automatically unfair because I have been satisfied that none of the Respondent's conduct was because of matters raised by Mrs Sturm to Mrs Hall in January 2020 because these were unknown to the decision-makers at the time.

58. Mrs Sturm asked repeatedly after the termination of her employment for written confirmation of her dates of employment and her job title. I question how much value this would actually have been to her where she was in a position to articulate that information in the context of any job that she applied for, but nonetheless I am readily persuaded that the non-provision of it constitutes as a matter of law a detriment to her. Eventually Mrs Brown sent a compliment slip on the back of which she had written that information, the dates of employment and the job title, followed by a request for Mrs Sturm to return company property.

59. This is a second and further example of what, in my judgement, is at best thoughtless behaviour by Mrs Brown and at worst unpleasant conduct by her in response to the general unpleasantness which had by this stage engulfed relations between Mrs Sturm and the organisation. If Mrs Brown genuinely did not appreciate the provocativeness of providing the information requested in the way that she did, this in my judgement itself shows a failing on her part. But once again I have been satisfied by the Respondent that Mrs Brown still did not know about the conversation between Mrs Sturm and Mrs Hall in January 2020 and that the provision of the information requested in this way was not because of anything said by Mrs Sturm in January 2020. It was because of the acrimony between Mrs Sturm and Mrs Brown arising from the poor handling of the Claimant's dismissal and Mrs Brown's unprofessional and petty way of responding to that acrimony (instead of rising above it and managing it). I should add however that the Claimant did not help to decrease the metaphorical temperature of the situation.

60. It follows that although the delay in providing the requested employment information and the way in which the information was ultimately provided

was in my judgement detrimental to the Claimant, it was not because of anything that Mrs Sturm had said, and therefore was not an unlawful detriment under the Employment Rights Act 1996.

61. I return then in my conclusions to one matter which I have not yet resolved. Having concluded that the Claimant was ready, willing and able to return to work in March 2020 when she was instructed not to attend work because her son was showing signs of a persistent cough, the Claimant is in my judgement entitled to be paid for this period as a matter of contract. Her claim succeeds in contract to that extent.

62. The only other live complaints of unlawful detriment and unfair dismissal because of the making of protected disclosures fail because the Respondent has satisfied me that Mrs Brown, as the decision maker in each case, did not know about the communications relied upon by Mrs Sturm as protected disclosures. Although I have, in any event, not been satisfied that the Claimant's communication of facts to Mrs Hall in January 2020 constituted protected disclosures in light of my findings of fact above.

63. Those, therefore, represent my conclusions in this claim.

64. I hope that now the claim has been resolved everyone involved in it will be able to move on from what has plainly been a difficult dispute. I express on behalf of the Tribunal the regret that it has taken as long as it has for it to be resolved, and that the provision of these written reasons has also taken so long, as a result of some administrative difficulties, ultimate responsibility for which rests with me alone.

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Employment Judge T Brown

Date: 13 December 2023

Sent to the parties on:
3 January 2024................

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For the Tribunal Office