



EMPLOYMENT TRIBUNALS

Claimant: Miss C Beales
Respondent: GI Recruitment Limited
Heard at: Nottingham
Heard on: 11 – 13 September 2023
Before: Employment Judge Victoria Butler (sitting alone)
Mr A Beveridge
Dr G Looker

Representation

Claimant: In person
Respondent: Ms D Gilbert, Counsel

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

JUDGMENT

The unanimous decision of the Tribunal was that:

1. The claims of whistleblowing detriment; automatically unfair dismissal; sexual harassment; victimisation; wrongful dismissal and holiday pay fail and are dismissed.
2. The claim of disability discrimination is dismissed on a withdrawal by the Claimant.

Background

1. The Claimant presented her claim to the Tribunal on 25 November 2021 after a period of early conciliation between 25 October 2021 and 25 November 2021. It was initially

issued against Birds Eye Limited as a second Respondent but the claims against it were settled before the commencement of the hearing.

2. The Claimant claims whistleblowing detriment, automatically unfair dismissal, sexual harassment, victimisation, wrongful dismissal and holiday pay.
3. During the hearing, the Claimant conceded that she was not a disabled person for the purposes of the Equality Act 2010 and was somewhat confused as to why the claim had been advanced in the first place. She withdrew the claim, and it was dismissed accordingly.
4. She also withdrew the following two protected disclosures/acts:
 - i. *On 4th August 2021, a verbal conversation with the Claimant and Jamie Devenish (R1) as above.*
 - ii. *A written complaint provided to Tracy Robison (R1) on the 5th August 2021 which was subsequently provided to R2 on the 5th of August 2021 which was subsequently provided to R2*
5. The Claimant conceded that the conversation referred to in i. above was the conversation with Tracy Robinson, not Mr Devenish. The written complaint referred to in ii. above was a complaint submitted by her colleague.

The issues

6. The issues to be determined by us were agreed between the parties as follows:

“Protected Disclosure

7. Did the Claimant make any disclosure of information which in her reasonable belief was made in the public interest and tended to show that a criminal offence had been committed, was being committed or was likely to be committed within the meaning of s.43B(1)(a) of the Employment Rights Act 1996 (“ERA 1996”) and/or that there was a failing to comply with its legal obligation under the Equality Act 2010 s.43B(1)(b).
8. In particular, did the following matters relied upon by the Claimant amount to such a protected disclosure:
 - a. On 4th August 2021, a verbal conversation between the Claimant and Tracy Robinson (R1) where the Claimant reported the sexual harassment
 - ~~b. On 4th August 2021, a verbal conversation with the Claimant and Jamie Devenish (R1) as above.~~
 - ~~c. A written complaint provided to Tracy Robison (R1) on the 5th August 2021 which was subsequently provided to R2 on the 5th of August 2021 which was subsequently provided to R2~~

Detriments and/or deliberate failure to act

9. Was the Claimant subjected to any detriment within the meaning of s.47B ERA 1996 because she had made a protected disclosure?
10. In particular, did any of the following alleged acts or failures to act on the part of the Respondents take place and if so did they amount to a detriment for these purposes:
 - a. On the 4th August 2021, Tracey Robinson (R1), Manager, remarked “You know where this would lead, you would lose your job!”
 - b. A failure by R1 to investigate/deal with the alleged sexual harassment of the Claimant i.e failure to give the outcome and right to appeal.
 - c. The R's removing the Claimant from the factory.
 - d. Failure to provide the Claimant with alternative work.

Automatic Unfair Dismissal -Section 103A Employment Rights Act 1996

11. What was the reason for the Claimant's dismissal?
12. In particular, was the reason or the principal reason for the Claimant's dismissal, the fact that she had made one or more protected disclosures?

Sexual Harassment – s.26 Equality Act 2010

13. Did either Respondent or any person for whose conduct it was legally responsible to the Claimant engage in any conduct which amounted to unwanted conduct related to sex; and had the purpose or effect of violating the Claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
14. The Claimant relies on the following acts of harassment:
 - a. On the 4th August 2021, Tracey Robinson's (R1) remark “You know where this would lead, you would lose your job!”.
 - b. A failure by R1 to investigate/deal with the alleged sexual harassment of the Claimant i.e failure to give the outcome and right to appeal.
 - c. R2 removing the Claimant from the factory.
 - d. Failure to provide the Claimant with alternative work.
 - e. Dismissal

Victimisation contrary to s.27 EqA10

15. Whether the Claimant did a protected act?
16. The Claimant relies on the following protected Acts:
 - a. On 4th August 2021, a verbal conversation between the Claimant and Tracy Robinson (R1) where the Claimant reported the sexual harassment
 - ~~b. On 4th August 2021, a verbal conversation with the Claimant and Jamie Devenish (R1) as above.~~
 - ~~c. A written complaint provided to Tracy Robinson (R1) on the 5th August 2021 with full details of the sexual harassment/assault, which was received by R2.~~
17. Whether the Claimant was treated less favourably because she did a protected act?
18. The Claimant relies on the following act of victimisation:
 - a. On the 4th August 2021, Tracey Robinson's remark "You know where this would lead, you would lose your job!"
 - b. Removing the Claimant from the factory.
 - c. Failure to provide the Claimant with alternative work.
 - d. Dismissal

Wrongful Dismissal – Notice Pay

19. Was the Claimant's conduct capable of being constructed as an act of Gross Misconduct and therefore does the act of summary dismissal fall within the band of a reasonable response from a reasonable employer?
20. If not, the Claimant is entitled to 1 weeks' pay in lieu of notice.

Holiday Pay.

21. Did R1 fail to pay accrued but untaken holiday pay to the claimant at the termination of his employment?
22. If so, what amount is owed to the C?

ACAS Code

23. Did the Claimant comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures by following a grievance process?

24. Did the Respondent follow the ACAS code by writing to the Claimant and inviting her to a grievance meeting, giving an outcome in writing and giving the claimant the right to appeal?
25. If not, should any compensation be increased or reduced to reflect the above?"

The hearing

26. The day before the hearing (a Sunday), the Claimant's solicitor made an application to permit the Claimant to attend the hearing remotely. He was not representing her at the hearing, she lives in Southend-on-Sea and could not afford to travel to Nottingham by train or stay overnight. We granted the application to prevent a delay to the start of the hearing. However, we also permitted the Respondent's witnesses to attend remotely as they also had some distance to travel. Counsel for the Respondent attended in person apart from on the third day.
27. The Claimant joined the hearing remotely using her mobile phone. She was able to keep it stable and all parties could hear and see each other. The Employment Judge suggested she try and find an alternative device overnight, but she was unable to. However, we were satisfied that there was no impact on the quality of the hearing.

The evidence

28. We heard evidence from the Claimant, and she was wholly unreliable. By way of example, she alleged that her supervisor had stroked her with his open hand on the right side of her back from her shoulder blade to her bottom whilst she was working on the production line. She continued to maintain this allegation during the hearing but when we reviewed the CCTV footage, it was simply untrue. The supervisor simply placed his hand on the middle of her back whilst he was talking to her in what was obviously a noisy environment and one in which everyone was wearing masks. The Claimant also relied on an allegation that a Ms Robinson told her that she would lose her job if she raised a grievance. Again, this was simply untrue as we address below.
29. We heard evidence on behalf of the Respondent from the following:
 - Mr Andrew Elmore, Regional Manager
 - Mr Jamie Devenish, Account Manager
 - Ms Toni Shirley, HR Business partner
30. The Claimant had little by way of cross examination for them, but we were satisfied that their evidence was entirely credible and consistent with the contemporaneous documents within the bundle.
31. Accordingly, when there was a conflict in the evidence, we preferred the evidence of the Respondent's witnesses.

The facts

32. We made our findings of fact based on the material and evidence before us. Where there was any conflict, we resolved that conflict on the balance of probabilities.
33. Against the background of the claims to be determined, there was a complaint by the Claimant about a pay increase not awarded to her. However, it was only relevant to the disability discrimination claim which was withdrawn so we do not address it in the facts.
34. The Respondent is an employment business and the Claimant commenced employment with it as a Flexible Employee on or around 13 October 2020. She was assigned to work at Birds Eye Limited on or around 19 October 2020 as a Production Operative.
35. The Claimant's contract of employment provided the following:

“While you are on Assignment with any of the company's clients you shall:

follow any of the clients' rules and regulations, including without limitation those regarding health and safety and dress code, to which your attention has been drawn;

.....

ensure that you comply with client security measures at all times, including following any instructions relating to the wearing of security badges or identity cards” (page 73).

36. Under the heading ‘Health and Safety at Work’ the contract provides:

“During every assignment you will take all reasonable steps to safeguard your own health and safety and that of any of the person who may be present or be affected by your actions on the Assignment and comply with the health and safety policies and procedures of the Client” (page 82).

37. The Respondent's disciplinary procedure defines the following as acts of gross misconduct: *refusal to comply with or deliberate disregard of health and safety regulations and wilfully endangering others (page 88).*

38. The Claimant attended an induction at Birds Eye which included a slide show. The relevant slides provided:

Payments and benefits:

You MUST clock in when starting your shift and clock out when leaving the department for any reason including your finish time. This is to ensure the fire register remains current at all times and to register your attendance for payment....(page 100)

Hours of work and breaks:

You must not leave the line or the site without informing a manager and the GI group office (page 101)

Safety Awareness:

Your legal duties

You must take reasonable care for your own health and safety

You must ensure that no one else is affected by something you did or did not do. (page 103)

The Claimant's grievance

39. By way of background, a colleague of the Claimant raised a grievance on 3 August 2021 in the similar terms to the grievance raised by the Claimant the following day. Ultimately, the colleague was dismissed shortly thereafter for gross misconduct (page 240).
40. On 4 August 2021, the Claimant approached Ms Tracy Robinson, Manager, and made allegations of sexual harassment against her supervisor. The complaint was personal to her, and she did not refer to any other individual within it.
41. Ms Robinson met with the Claimant later that day for a formal investigation meeting. The Claimant made numerous allegations, including that her supervisor had "*stoked the right side of my back from my shoulder blade to my bum with his open hand. I just put my head down and carried on with my work, and he walked away*". She also said that he asked her if he would get a "*birthday snog*" on his birthday, but she laughed it off (pages 125–126).
42. The Claimant texted a friend later that day to report that her supervisor had touched her '*back and ass under the camera*' the previous day. She recounted the conversation with Ms Robinson who she said did not know where the Claimant stood in terms of where she would work after putting in a complaint (as in whether she would be moved from the line to another part of the factory) but reassured her that she could not be sacked as a result (page 203).
43. The Claimant was given the opportunity to move lines but confirmed she was happy to stay where she was (page 137). She was offered her shifts as normal.
44. Ms Robinson invited the Claimant to another meeting the following day, primarily to ascertain when the supervisor allegedly stoked her so CCTV footage could be obtained (page 128).
45. Thereafter, Ms Robinson promptly began investigating the Claimant's grievance and interviewed Mr Hoo Lee and Mr Mcamara on 5 August 2021. Mr Hoo Lee did not witness anything to assist. Mr Mcamara said he witnessed the supervisor asking the Claimant if he would get a '*birthday kiss*' but the Claimant laughed it off.

46. On 20 August 2021, the Claimant left her shift early without clocking out and complying with reporting procedures. She was *'de-assigned'* from Birds Eye and other work whilst an investigation was undertaken in accordance with the Respondent's disciplinary procedure which provides for suspension with pay pending the outcome of an investigation and/or disciplinary procedure (page 87).
47. The Claimant was invited to attend an investigation meeting conducted by Mr Chris Culver on 24 August 2021. At the meeting, the Claimant denied that her leaving the site was unauthorised and alleged that the shift manager, Mr Baldry, had told her that she could go home. The Claimant explained she wanted to stay because she needed the money, but Mr Baldry said to go, and he would clock her out so she would get paid. The Claimant explained that she thought Mr Baldry had subsequently *"docked her pay"* because she had told him a colleague was in the bowling alley when he thought that she was sick (pages 148 – 149).
48. The same day, the Claimant attended a further investigation meeting into her grievance. She repeated the allegations against her supervisor including that he had *'rubbed his hand all the way down my back and side'* and that he had asked her for a *'birthday snog'* in the cigarette hut (pages 150-151).
49. Mr Culver obtained the CCTV footage and observed that the supervisor had talked to the Claimant and merely placed his hand to the centre of her back as he moved on. He did not rub the Claimant in the way she alleged (page 154).
50. On 26 August 2021, the Claimant attended a further disciplinary investigation meeting chaired by Mr Devenish, Account Manager, in relation to her failure to clock out on 20 August 2021. In that meeting, she gave a different version of events and said a manager called Robin said she could go home. However, she said *"to be honest I was tired and rushing to go and I completely forgot, hold my hands up I know the implications of not clocking out and it being a big H&S risk and I know I should of and I'm sorry that I didn't"* (pages 155-156).
51. On 13 September 2021, the Claimant met with Mr Devenish again. His intention was to give her an update on her grievance, but she said: *"It's fine I'm happy for everything to be dropped"*. Mr Devenish checked that she was withdrawing her grievance and she replied: *"yes please"* and signed a document confirming the withdrawal (page 158). Accordingly, that brought the grievance to an end and there was no requirement to take matters further or provide an outcome.
52. On 21 September 2021, the Claimant was invited to attend a disciplinary hearing in relation to the following matters:
 - i. *"Leaving the Birds Eye site without permission.*
 - ii. *Failing to clock out when leaving the site.*
 - iii. *Breach of health and safety.*
 - iv. *Failure to follow company policies and procedures."*

53. The Claimant was warned that if the allegations were substantiated then it may constitute gross misconduct with the result of her employment being terminated with immediate effect (page 159).
54. The Claimant asked if her dad or solicitor could attend with her to the disciplinary hearing, but she was advised that only a work colleague or trade union representative could attend in accordance with procedure. She did not raise any issues with other work colleagues who may or may not have been able to attend.
55. The disciplinary meeting took place on 28 September 2021 chaired by Mr Elmore, Operations Support Manager and the Claimant attended alone. In the hearing, she admitted that she had not clocked out, explaining that she had forgotten because she was eager to leave. She also accepted that she understood the health and safety consequences of not clocking out.
56. Mr Elmore considered the allegations against the Claimant and given her admissions, took the decision to dismiss her for gross misconduct with effect from 29 September 2021. The Claimant was given the right to appeal which she did not exercise (page 166).
57. On 14 October 2021, some two weeks after her dismissal, the Claimant reported her complaints about her supervisor to the police but provided no further information as part of these proceedings.
58. On 20 January 2022, Mr Calver interviewed the Claimant's supervisor who vehemently denied all the allegations, save that he had said to the Claimant jovially on her birthday that he would give her birthday kiss but could not because they were wearing masks and that she had obviously taken it the wrong way.

The law

Whistleblowing

59. Section 47B Employment Rights Act 1996 ("ERA" provides:

“(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.”

60. Section 103A ERA provides:

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”

61. Given that the Claimant lacks the requisite length of service to bring a claim for ordinary unfair dismissal, she has the burden of proving, on the balance of probabilities, that she was dismissed because she made protected disclosures. If she can establish a

prima facie case that she was dismissed for the same, it is up to the Respondent to adduce evidence to the contrary - *Smith v Hayle Town Council 1978 ICR 996, CA*.

Burden of proof

62. Section 136(2) EQA provides:

- (1) This section applies to any proceedings relating to a contravention of this Act
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

Harassment

63. Section 26(1) of the Equality Act 2010 provides:

- (1) "A person (A) harasses another (B) if:
 - (a) A engages in unwanted conduct related to a protected characteristic and
 - (b) the conduct has the purpose or effect of:
 - i. violating B's dignity, or
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

64. Section 26(4) provides that whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account:

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

Victimisation

65. Section 27 EQA provides:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

.....

Wrongful dismissal

66. A claim for wrongful dismissal requires us to consider whether the Claimant committed the acts referred to and whether they amounted to a fundamental breach of contract.

Holiday pay

67. Section 13 of the Employment Rights Act 1996 provides:

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

- a. the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
- b. the worker has previously signified in writing his agreement or consent to the making of the deduction.

.....”

Conclusions

Wrongful dismissal

68. Having regard to the Claimant’s own admissions, we are satisfied that she was in repudiatory breach of contract by failing to log out after her shift in breach of Birds Eye’s procedures and health and safety rules and, in consequence, potentially placing other individuals’ health and safety at risk. Even before us she conceded that she put other people at risk of danger. We are, therefore, satisfied that she was guilty of the gross misconduct alleged and her claim for wrongful dismissal fails. Accordingly, she is not entitled to notice pay.

Whistleblowing

69. For a disclosure to be protected, there must be a disclosure of information about a specified type of wrongdoing. The Claimant must reasonably believe that her disclosure tended to show one or more of a specific type of wrongdoing and that the disclosure was made in the public interest.

70. The Claimant says that she reported a criminal offence of sexual harassment. Ms Gilbert conceded that the Claimant disclosed information. She also said that the Claimant potentially held a reasonable belief that there had been a relevant failure. We expressed some reservation about this submission given the Claimant’s allegation

that the supervisor had stroked her from her back down to her bottom was clearly untrue.

71. However, the Respondent submitted that the Claimant's case primarily fell down on the public interest test. It for the Claimant to prove that she held a reasonable belief that her disclosure was in the public interest.
72. We were referred to the case of **(1) Chesterton Global 92) Verman v Nurmohamed [2017] IRLR 837** in which Underhill LJ stated that: *"I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the Parkins v Sodexho kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of s.43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest"*.
73. Underhill LJ confirmed that an assessment of the following considerations might be useful: the number in the group whose interests the disclosure served: the nature of the interests affected: the extent to which those interests are affected by the wrongdoing disclosed: the nature of the wrongdoing disclosed; and the identity of the alleged wrongdoer.
74. We have had considered the Claimant's evidence in this matter. In her witness statement she simply says: *"I believe that my complaint amounted to a protected disclosure"*. There is no reference to the public interest element of the test.
75. The Claimant said in evidence before us that other people were affected by her disclosure and repeated on numerous occasions that her supervisor touched 'every single girl' on the production line. We saw from the CCTV evidence that this was untrue. The Claimant ultimately conceded that her evidence in this regard was wrong and that the disclosure only related to her own personal circumstances and no further individuals were affected. Accordingly, there was no group and therefore no public interest.
76. Furthermore, any argument that she reasonably believed that the disclosure was in the public interest is countered by the fact i) both allegations about touching were false and ii) she subsequently withdrew the grievance.
77. As such, on the Claimant's evidence we are satisfied that the public interest test is not met, and her disclosure was not protected. Accordingly, her whistleblowing claim fails and is dismissed.

78. For completeness, even if she had made a protected disclosure, the claim would fail for the reasons below.
79. The Claimant alleged that when she initially raised her grievance Ms Robinson said: *“you know where this would lead, you would lose your job”*. However, she conceded that this statement was inaccurate and what Ms Robinson really said was that she could not be sacked. It follows that the allegation fails on the facts and, in any event, Ms Robinson’s assurance that she would not be sacked does not amount to a detriment.
80. The Claimant alleged that the Respondent failed to investigate/deal with her complaint of sexual harassment and failed to give an outcome and right to appeal. Again, this allegation fails on its facts. The Respondent started to investigate and undertook interviews with the Claimant (twice), Mr Lee Ho, Mr Howarth. The Claimant was called to a meeting with Mr Devenish on 13 September 2021 for an update on the grievance, at which point she withdrew it. Given that withdrawal, there was no requirement to provide an outcome or a right of appeal. Accordingly, the allegation fails on the facts.
81. We add at this point that given an investigation was clearly underway into the Claimant’s grievance, but she withdrew it, there was no breach of the ACAS code.
82. The allegation that the Claimant was removed from the factory must also fail. The Respondent acted in accordance with its disciplinary procedure by suspending her whilst she was under investigation for a serious health and safety breach. Accordingly, we are satisfied that she was not offered shifts after 20 August 2021 because of her misconduct, not because she made a protected disclosure or for any reason relating to it.
83. The Claimant also complains that the Respondent failed to provide her with alternative work but her case in this regard was unclear and she was unable to assist us further with any certainty. However, we are satisfied that there was no failure to provide her with alternative work after she raised her grievance because, on her own evidence, she continued to work her shifts as normal.
84. If the Claimant’s claim is that she should have been offered alternative work after the clocking out incident on 20 August 2021, she was suspended in accordance with the Respondent’s disciplinary procedure and any *‘failure’* to provide work was related to her misconduct and not her disclosure. Accordingly, the allegation fails.
85. Finally, given the Claimant’s admission of gross misconduct, we are satisfied that her conduct was the reason for her dismissal and not because she made a disclosure or for any reason relating to it. Accordingly, her claim of automatically unfair dismissal also fails.

Sexual harassment

86. The Claimant relies on the same allegations as the whistleblowing detriments.
87. As above, the allegations that Ms Robinson said to the Claimant when she initially raised her grievance *“you know where this would lead, you would lose your job”* and

that the Respondent failed to investigate/deal with her complaint of sexual harassment and failed to give an outcome and right to appeal fail on their facts. Furthermore, Ms Robinson's assurance that she would not be sacked cannot amount to harassment.

88. The allegation that the Claimant was removed from the factory fails for the same reasons. She was not offered shifts after 20 August 2021 because of her misconduct, not for any reason relating to sex.
89. The allegation that the Respondent failed to provide her with alternative work also fails for the same reasons. The Claimant was offered shifts in the usual way after raising her grievance and after the allegation of misconduct was raised, she was suspended in accordance with procedure. As such, any 'failure' to provide work was related to her misconduct and not her sex.
90. Finally, given the Claimant's admission of gross misconduct, we are satisfied that her conduct was the reason for her dismissal and not for a reason relating to sex and this allegation also fails.

Victimisation

91. The Claimant relies on her raising her grievance to Ms Robinson as the protected act. Ms Gilbert submitted that in principle, it could be a protected act. However, she referred us to section S.27 (3) EQA and submitted that the allegations were false and made in bad faith.
92. We have had regard to the allegation that the supervisor touched the Claimant from her back to her bottom which we saw was untrue and, therefore, a false allegation. She further alleged before us that the supervisor touched 'every single girl' on the line as well. Again, we saw that was simply untrue. The Claimant later 'dropped' the grievance yet failed to mention this in her witness statement. She continued to argue that the Respondent failed to investigate, provide an outcome, or give her the right to appeal despite evidence of her withdrawal in the bundle. Overall, this leads us to conclude that the Claimant made false allegations and the grievance was raised in bad faith.
93. Ms Gilbert submitted that the birthday kiss allegation, which was corroborated by Mr Macnamara, does not revive the whole and we agree. There was a discrepancy in accounts of the words used but, importantly, both the Claimant herself and Mr Macamara say she laughed off the comment. In addition, we saw in the bundle that she publicly posts explicit sexual detail on a social media platform casting doubt on whether the comment had the proscribed effect in any event.
94. Given the above, we are satisfied that the allegations made were either untrue or made in bad faith and, therefore, she did not do a protected act.
95. However, even if she did do a protected act, we are satisfied that the first allegation in this regard must fail on its facts because the words attributed to Ms Robinson are incorrect. Ms Robinson told her that she could not be sacked which does not amount to detriment.

- 96. The allegation that the Claimant was removed from the factory must also fail. She was not offered shifts after 20 August 2021 because of her misconduct, not because she did a protected act.
- 97. The same reasoning applies to the allegation that the Respondent failed to provide alternative work. This was because she was under investigation for a serious health and safety breach, which she ultimately admitted, and not because she did a protected act or for any reason relating to it.
- 98. Finally, given the Claimant’s admission of gross misconduct, we are satisfied that her conduct was the reason for her dismissal and not because she raised allegations of harassment. Accordingly, this allegation also fails.

Holiday pay

- 99. The Claimant could not explain what her claim for holiday pay was. However, the Respondent produced payslips evidencing that it paid her any outstanding holiday pay.
- 100. The burden of proof is on the Claimant to prove her case and she has failed to do so, and therefore the claim fails.

Employment Judge Victoria Butler

Date: 9 October 2023

JUDGMENT SENT TO THE PARTIES ON
1st November 2023

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FOR THE TRIBUNAL OFFICE

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