EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Yiannis Sapanidis	**v**	YMCA Milton Keynes

Heard at: Norwich

On: 24, 27, 28, 29, 30 November 2023

Before: Employment Judge Postle

Members: Mrs Gaywood and Mr Allan

Appearances
For the Claimant: Miss May, Solicitor
For the Respondent: Mr I Choudhury, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is:

1. The Claimant was not automatically unfairly dismissed for making protected disclosures under Section 103A of the Employment Rights Act 1996.

2. The Claimant was not subjected to a detriment pursuant to Section 47B of the Employment Rights Act 1996.

REASONS

1. The Claimant brings claims to the Tribunal under s.103A of the Employment Rights Act 1996 ("ERA"), namely that he claims he was automatically unfairly dismissed for making protected disclosures. The Claimant also brings a claim of detriment under s.47B ERA 1996.

2. The specific issues were set out at a Case Management Hearing on 4 October 2022, particularly that the alleged protected disclosures being:

   2.1. the commercial extractor fan was not working;
   2.2. fryers were not under the extraction unit;

2.3. no PPE or uniform was provided;
2.4. no staff changing rooms;
2.5. lack of proper management Certification relevant to food premises;
2.6. attempting to sell food past its sell by date;
2.7. pest control in a former Manager's name; and
2.8. cleaning products improperly stored.

3. These are said to have been made to a large number of the Senior Management Team and further members of staff. It is set out as to who they are alleged to have been made in the Claimant's further particulars at page 44 of the Bundle.

4. The Claimant also asserts he was subject to detriments as set out at page 54 of the Bundle. The detriments the Claimant relies upon are:

4.1. telling the Claimant to stop moaning, or say he was wasting time;
4.2. ignoring him;
4.3. calling him a snitch;
4.4. telling him he needed to stop being so political regarding Certification; and
4.5. accusing him of poor performance and that he would be put on a Performance Management Plan.

5. The qualifying disclosures said to have been made appear primarily to be under s.43B ERA 1996:

> **43B Disclosures qualifying for protection.**
>
> (1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

6. In the Claimant's further particulars he seems to have done a bolt and braces job by including the paragraphs in 43B(a) – (f) ERA 1996, above.

Evidence

7. In this Tribunal we have heard evidence from the Claimant through a prepared Witness Statement, from the Respondents we heard evidence from Mrs Anne Rhind, Mrs Amanda Saville, Miss Clare Garey, Miss Kat Newman, Miss Sonia Corentin and Mr Simon Green the Chief Executive Officer. All giving their evidence through prepared Witness Statements.

8. The Tribunal also had the benefit of a Bundle of documents consisting of 214 pages.

The Facts

9. The facts of this case show the Respondent is an independent Charity affiliated to the YMCA England and Wales, it supports people aged 18 – 35 with emergency accommodation and supported housing, as well as training and employment opportunities.

10. The Claimant was employed by the YMCA at Milton Keynes as a General Assistant working in the Respondent's kitchen and Café from 14 September 2020 until his dismissal for conduct on 4 February 2022. The Claimant had one year and four months' service at the time of his termination. The Claimant had also previously resided at the YMCA in Milton Keynes at various times previously and during the course of his employment.

11. It is clear the Claimant, throughout his employment, was a capable assistant in the café and kitchen and on occasions was friendly towards his colleagues.

12. However, it is also clear that when things did not go the Claimant's way and he felt he was not listened to, he became frustrated which manifested itself into aggressive behaviour and at times intimidating behaviour. Indeed, the Claimant provided a Character Reference from a Mark Yerrell at page 133, a former Manager of the Café who line managed the Claimant, whom said,

> *"Whilst it is clear that some might find him defensive and perhaps argumentative, I interpreted his nature as merely showing care of his job and to Health and Safety and wellbeing of everyone he encountered."*

13. Mr Yerrell left the Respondents in September 2021 and was replaced by an interim Manager Mrs Clare Garey who was also at the same time the Housekeeping Manager at the Respondents. It is clear that she found the Claimant demanding, difficult to manage and intimidating to the extent that she describes the Claimant making her life hell whilst managing the Café.

14. It is also important to note that the Claimant had various Food Certificates, including: 'Level 1 - Safer Food Essentials', 'Level 2 – Safe Food

Handling', 'Level 2 – Safer Allergy Awareness' and 'Level 3 – Safer Food Supervision course'.

15. The Claimant asserts that when Clare Garey was appointed interim Manager, following Mr Yerrell leaving, that Health and Safety procedures were not complied with and that there was no Hazard Analysis Critical Control Points; i.e. how to manage Food Hygiene. However, there is no evidence that this was actually raised, certainly not in writing. The Claimant says he raised this orally at various times with Mrs Rhind, he says on 13 September, 20 September and also raised it with Mr Green and Kevin Northend. None of which recall these matters being raised.

16. What is clear is the Claimant was in the habit of speaking to anyone who would listen, raising issues around the kitchen in an effort to undermine Miss Garey and ultimately Alison Bell who took over on a permanent basis the running of the kitchen on 10 January 2022.

17. The Tribunal noted that none of the alleged disclosures the Claimant asserts were set out in writing to Senior Management, despite the Claimant taking the trouble to notify Lisa Harrison, Director of Operations, by email, adding a photograph of spilt milk in a fridge and on the floor which was duly acknowledged by Lisa Harrison the same day and staff notified of this factor and to take care in the future. In fact, the only time the Claimant ever raised an issue in writing was this particular incident.

18. The Claimant also complained that the Respondents were non-compliant with pest control procedures. What is clear is that the Respondents had a contract with a pest control company, although the name of the contact was in the name of the previous Manager Mark Yerrell, the point being, which was missed by the Claimant, is that the Respondents had a contract with a pest control company regardless of the point of contact which could simply be changed by a call should it be necessary, to the pest control company.

19. The Claimant did raise an issue orally on a date unknown, sometime possibly in September, October or December 2020, with Mrs Rhind about the extractor fan not working. This had been raised with the Maintainance Team and the fact of the matter was that the fan was functioning but possibly not to its full capacity and was raised in the context that it caused the Claimant's clothes to smell. It was not raised at the time as a potential fire risk, he merely commented he was worried of the potential of a build up of grease residue on the walls. Which in any event, could and should have been cleared by kitchen staff. The Claimant asserts that the fryers, again on a date unknown, were positioned incorrectly under the extractor fan. Apparently this had been flagged up to Maintenance and merely required the fryers to be moved one inch one way. Again, this appears only to have been raised orally as an issue regarding the Claimant's clothes smelling and not as a specific Health and Safety issue.

20. The Claimant also raised, again on dates in late 2021, a lack of sufficient Chef's uniform. However, if that is correct, it is odd that this was not raised previously with Mark Yerrell and when it was raised, on whatever date it was which is unclear, an order was placed. It is accepted the Claimant raised with Mrs Rhind in January 2022 that the changing room had been turned into the new Manager's office for Alison Bell. Apparently this was rectified the same day as lockers being moved to an accessible bathroom toilet for changing. The Claimant asserts this was unhygienic and there was a danger of cross contamination and therefore was a Health and Safety issue. However, Mr Green's evidence was and we accept, there is no regulations preventing the use of a toilet area in any event.

21. Furthermore, it should be noted that a Chef during the course of his shift would use the toilet facilities and would not be expected to change out of his Chef clothing every time he wished to avail himself of the toilet.

22. The Claimant also asserts, again at various dates (not clear) whether it be September, October or December 2021, that he raised with Mrs Rhind the fact that there was a lack of proper management Certification for the Café premises. The first thing is, if he did raise this, which is denied by Mrs Rhind, he had the appropriate Food Certificates in any event, as did Clare Garey, as did Alison Bell. It is accepted that Alison Bell undertook a refresher course in February, shortly after commencing with the Respondents. It is accepted he raised orally the issue of the competence of Clare Garey, questioning what Certificates she had. His view was that she should not be the Manager of the Café as she did not have the same level of Certification as the Claimant.

23. The Claimant also asserts that he raised incorrect storage of food and temperature control. Mrs Rhind denies this and there is no evidence from any other Senior Managers that this was in fact raised. Again, if this was a problem it begs the question why the Claimant simply did not correct any deficiency in where the storage of the food was kept, given his level of qualification.

24. The Claimant also asserts that cleaning products were stored in the food preparation area. Again, the above is repeated and there is no evidence this was a problem, or raised with Senior Management. If the Claimant had seen this, why not simply remove it? It is perhaps symptomatic of the Claimant finding fault over minor and trivial matters on almost a daily basis.

25. As to the allegation over food sold past its sell by date by Alison Bell in January 2022 when she used Mars Bars to make a tray bake, it was never really established before this Tribunal or at the time, whether it was a food past its 'sell by' date or food 'best before'. The Claimant, it is accepted raised this with Mrs Rhind in an unfortunate manner interrupting her in an aggressive manner whilst she was holding a meeting at the Respondents. The decision was quickly made that the food / Mars Bar tray bake would be removed forthwith. Following which Alison Bell realising the Claimant

had gone above her head, called him either a *"snitch"* , or that he had *"snitched her up".* It matters not what was said, she was merely expressing her annoyance as the Claimant was clearly attempting to undermine her shortly into her appointment.

26. The Claimant raising further issues with Mrs Rhind at a meeting together with Simon Green, that Alison Bell was not qualified to be the Manager. The Claimant at this meeting, whether it was on 15 or 22 January 2022 or around that time, the meeting was called to try and put together a proper team of working together. The emphasis was that it was a new team, who have got to pull together. Mr Green expressed concern at this meeting that the Claimant was speaking to anyone he saw about concerns which were now becoming hugely disruptive as the issues were of a minor nature and almost daily. The Tribunal are satisfied nothing more was said to the Claimant about being too political, it was about working together as a team.

27. The Claimant also asserts there was insufficient power outlets. This was not raised with either Miss Garey or Mrs Rhind and in any event, there appears to have been sufficient power outlets from Miss Garey's evidence.

28. The Claimant also asserts that the Respondents were not complying properly with the oil storage and that there was insufficient storage facilities for used cooking oil. Again, no Senior Managers were aware of this and in any event, there was a contract in place with a company to collect the used oil and all that was required was a call to that company to come and collect it. It is therefore difficult to understand what is being alleged there.

29. Going back to Alison Bell when she started in her role, she clearly did raise with Mrs Rhind a number of issues that needed attention in the kitchen, these were taken up by Kevin Northend the Maintenance Manager, which was set out at page 112 and is indicative of the Respondents taking any matters that are of concern being dealt with and taking them seriously.

30. In the week commencing 17 January 2022, the Claimant was asked to participate in Barista training (coffee making training) and for reasons best known to the Claimant, he flatly refused to go on the training saying that he did not need to go on it or had done the course as he had been on refresher courses in the past. That was a perfectly reasonable Management instruction and again, the Tribunal repeat, for reasons best known to the Claimant he refused to undertake the course.

31. There is a further example of the Claimant's attitude and behaviour towards colleagues. This is seen on 3 December 2021, in a meeting with Lisa Harrison, Director of Operations, which was sought to discuss the new rotas and holidays and the fact that the Claimant had used all his holiday entitlement for that year. Whereupon the Claimant accused Miss Davidson, or the Respondents, of having tampered with he holiday record,

he became aggressive and threatening whilst using the *"fuck"* word. This was subsequently investigated by Will McCormack, Corporate Partnership Manager, taking a statement from both Miss Davidson and the Claimant. It is interesting that the Claimant accepted in his statement to Mr McCormack that he had become frustrated, the meeting was heated he accepted, that it had got out of hand and that he wanted to apologise. Mr McCormack's conclusions and recommendations in the Outcome Report on 15 December 2021 are at page 187 of the Bundle. They are,

> *"I recommend a written warning. I base my final decision on the use of abusive language to another member of staff. We are trying to support our residents into work and give them the necessary skills and tools to do so and by ignoring this kind of behaviour we are suggesting this is acceptable, which it clearly is not. Our employment program teaches the necessary skills to gain employment and how we speak and communicate with others is a key component. The use of abusive language has no place in the workplace and when communicating with colleagues. The mitigating circumstances here are that Yiannis [the Claimant] is aware of his behaviour and knows it is totally unacceptable. He apologised within work time to Lisa. Yiannis has also not had regular supervisions and other support during his employment due to changes of management at Home Guard. He expressed how confusing and unclear he found the allocation of holidays."*

32. In the end a Letter of Concern was sent to the Claimant, at page 100 of the Bundle. A further outcome was in the sense that a written warning was not given, simply the letter of concern, but the Claimant was encouraged to undertake an anger management course which was to be paid for by the Respondents. The Claimant declined to attend this despite encouragement from the Respondents to attend the course on a number of occasions. The Claimant's reason for not going on the course was, he was not an angry person and did not need to engage in such a course.

33. In the meantime, following the appointment of Alison Bell and following the meeting whether it be on 15 or 21 January 2021 about working together, the Claimant clearly continued to approach Managers whether it be Mr Green the Chief Executive Officer or Mrs Rhind, to discuss issues in the kitchen in an attempt at what best can be described as undermining Ms Bell. It became a pattern that the Claimant was presenting a new problem on a regular basis to Senior Management however trivial. Alison Bell was, by 3 February 2021, clearly on top of her job and dealing with matters through the proper channels. The Claimant's behaviour had clearly escalated in January, raising these minor issues at every opportunity with various Senior Management including Mrs Rhind and Mr Green apparently sometimes several times a day and when he was told to speak to his own Line Manager Alison Bell, he refused to do so. Clearly with the intention of undermining her position and making the Claimant unmanageable.

34. It is accepted, given the above, that a decision was reached between Mrs Rhind and Lucinda Mubarak, the Director of Finance and Revenue, to terminate the Claimant's employment because of his disruptive manner in

which he was now continually raising issues. A meeting was arranged and it is accepted without warning, for 4 February 2022, between Mrs Rhind, Ms Mubarak and the Claimant, at which the Claimant was informed a decision had been reached to terminate his employment and the reasons for that. That decision was confirmed in writing to the Claimant on the same day, which sets out clearly the reasons for the Claimant's dismissal, these being:

> *"There are a number of concerns regarding your conduct that has led to this decision and I summarise these as follows,*
>
> - *Your continuing questioning and undermining of your management and a lack of willingness to take management instruction;*
> - *Your continuing argumentative and aggressive approach to situations;*
> - *Your refusal to attend anger management sessions funded by the YMCA; and*
> - *Your refusal to undertake Barrister training when offered.*
>
> *Unfortunately your recent behaviour has given me no reason to believe that your conduct is not likely to improve and we cannot to continue to spend a disproportionate amount of management time managing your behaviour and the implications of it.*
>
> *If we had proceeded with a Disciplinary Hearing we are confident that we would have reached the same conclusion, however, this may have taken two weeks to conclude, we will pay you an additional two weeks' pay."*

35. The letter goes on in more detail under each of those separate headings.

36. The Claimant was offered a Right of Appeal in the letter terminating his employment. The Claimant did exercise his Right of Appeal and there was a full Hearing before the Chief Executive Officer Simon Green who, after hearing from the Claimant and it was a fairly detailed hearing, took the decision to uphold the dismissal and set out his reasons in a very detailed letter of 22 February, which we see at pages 126 – 130 of the Bundle.

The Law

37. The Law is set out in s.43A of the Employment Rights Act 1996 and provides,

> 43A Meaning of "protected disclosure"
>
> A protected disclosure means a qualifying disclosure (as defined in s.43B) which is made by a worker in accordance with any of sections 43C to 43H.

38. Section 43B Employment Rights Act 1996 provides,

> 43B Disclosures qualifying for protection
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) …
>
> (d) that the health and safety of any individual has been, is likely to be endangered,
>
> (e) …
> (f) …

39. These appear to be the main areas which the Claimant attacks in terms of what he says are his qualifying disclosures.

40. It is correct there are three basic steps:

40.1. What was the protected disclosure, when, where, who etc.? Therefore you need to know exactly what it was, when it was said, what it is based on and the date of it.

40.2. Is it on the grounds the Claimant was then subjected to a detriment and s.103A ERA 1996 provides,

> "An employee who is dismissed shall be regarded 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."

There must of course be a causal link between the dismissal and the disclosure made. It is correct also that the disclosure information must be an actual disclosure of information and not just an opinion. It must be in the reasonable belief of the Claimant. It must be made in the public interest, not just to benefit the person making the alleged disclosure and must tend to show any one of the matters set out in s.43B ERA 1996.

40.3. The burden of proof starts with the Claimant.

The Conclusions

Extractor Fan

41. In relation to the extractor fan, what is really alleged here, what was the issue? It is not clear. The Claimant says it lacked power, not that it was not working, but it just was not working on full power. It is accepted he may well have had a reasonable belief, however, was there a public interest? The answer to that is 'no'. His concern at the time was that his clothes were smelling and that is not a breach. What the Claimant now says was there was a potential fire risk with the grease building up on the work surfaces, that was not the allegation or disclosure at the time.

Fryers

42. Turning next to the fryers not being in the right place. This is not in dispute, they had to be moved as they were one inch adrift of the extractor fan. Again, this was only raised in the context of the Claimant's clothes smelling, it was not a Health and Safety matter.

PPE

43. The allegation that no PPE was provided, however, it was provided. A third set was provided when raised and if this had really been a burning issue it is surprising that we see nothing in writing, whether to Clare Garey, Mrs Rhind or indeed the Claimant's previous Manager whom he got on so well with Mark Yerrell. In fact, just dealing with that point, if the Claimant really did have these genuine Health and Safety concerns or risks, or problems going on in the kitchen, one would have expected them to have been raised in writing. They were not. There is a total absence of any written evidence about any concerns that the Claimant had within the kitchen or the Café.

Spilt Milk

44. Indeed, as we have already said, the only email the Claimant raised concerning matters in the kitchen, was the spilt milk around the fridge which he bothered to take a photograph of and was actioned by Lisa Harrison the same day.

Staff Changing Facilities

45. Turning to the issue of no staff changing rooms, it is accepted this was raised. The lockers were moved and it was sorted out. How is this a protected disclosure? It may or may or not be hygienic to change in toilet facilities. Mr Green's evidence was that he was not aware of any Regulations requiring a separate facility away from the toilet and nothing has been advanced before this Tribunal to show that there is a need for a separate changing area. It is not Health and Safety and there is no reasonable belief that it was.

Management Certification

46. The lack of proper Management Certification is denied that this was ever raised. Whether it was or not, what is clear the Claimant could not have had a reasonable belief that a legal obligation or otherwise was being breached because quite simply the Claimant was qualified up to Level 3 and the Interim Manager had Certification when she was covering. The Claimant, the Tribunal repeats, was qualified and would also be responsible for ensuring proper management of the kitchen and food safety etc. We therefore do not accept that claim.

Food Storage

47. The Respondents deny this was ever raised. We think it probably was not, but if it was, there is no evidence food was stored in the wrong place. Again, if there was food stored in the wrong place which the Claimant observed, why not simply move it? It is clear that does not get near to being a qualified disclosure.

48. Insofar as there was insufficient oil storage allocation, again it is suggested this was never raised. The Tribunal on balance believe it was not. Even if it was an issue, in any event, there was a contract with a company that on request when called by the Respondents would come and collect it. It is difficult to see what that Health and Safety risk was in any event. It is clear this is not a qualifying disclosure.

Food Sell By Date or Best Before Date

49. It is not clear whether it was the 'sell by date' beyond, or 'best before' date beyond. This is in relation to the tray bake and the Mars Bars that Alison Bell used. It is clear this was raised by the Claimant with Mrs Rhind and when she became aware of it she immediately raised the matter with Ms Bell. No damage or harm was done. It is clear this was a Health and Safety matter and it is clear this was in the public interest.

50. However, one thing the Tribunal did note, in terms of reasonable belief a 'Best Before' date is actually a quality issue and not a breach of a legal obligation or Health and Safety. One would have expected the Claimant with his knowledge to have known that. Therefore if it was a 'Best Before', one does question whether in fact it was a breach of Health and Safety and therefore a qualifying disclosure at all. Whatever, the Claimant was not dismissed for this or suffered any detriment.

Cleaning Product Storage

51. There is no evidence before this Tribunal that this was raised with the Respondent. If there were cleaning products somehow put in the wrong place, one would expect a competent person working in the kitchen or

Café with the appropriate qualifications simply to move them to the correct place.

Pest Control

52. Insofar as the allegation of Pest Control is concerned, even if this ever was raised, it is not a qualifying disclosure. The contract clearly was with the Respondents. The contact details were in the name of a previous Manager, therefore all that needed to be done was to inform the contractors that the person they should now contact when appropriate was 'A', 'B' or 'C'. Clearly there was no breach of legal obligation and it was not a Health and Safety issue.

53. What the Tribunal has largely been unable to do from the evidence from the Claimant, or lack of it, is identify exactly what disclosures were being made, when they were being made and to whom they were being made. Therefore, apart from the food sell by date, and it is questionable depending on the answer whether it was 'Best Before' or beyond, there were no clear qualifying disclosures.

54. Even if they were, turning to the issue of the detriment, s.47B provides,

> 47B. Protected Disclosures
>
> (1) A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

It has to be linked to the disclosure. The Tribunal must therefore look at the reason for the treatment: was it because of the protected disclosure?

Comments Made

55. What was said matters not, whether *"you snitched me up"* or *"you snitch"*, is that a detriment? Is that what Parliament really intended when drafting the Legislation? The Tribunal think not. By any objective assessment, those comments, whatever was said, it is not a detriment. She was merely stating a fact given the fact that the Claimant was, yet again, trying to undermine her.

Automatic Unfair Dismissal

56. Turning to the allegation that the Claimant was automatically unfairly dismissed under s.103A ERA 1996 for making protected disclosures. Firstly, look at what was in the mind of the decision maker. We are enormously helped in reaching our decision in that what was in the mind of the decision maker, it is clear by looking at the dismissal letter,

> *"…your continuing questioning and undermining of your Manager and lack of willingness to take management instruction… your continuing argumentative*

> *and aggressive approach to situations… your refusal to attend anger management sessions funded by the YMCA… your refusal to undertake Barrister training when offered…"*

57. It is clear those were the reasons in the mind of Ms Mubarak and Mrs Rhind for the decision to terminate the Claimant's employment. They had absolutely nothing to do with any alleged qualifying protected disclosures.

58. Therefore the Claimant's claims that he was automatically unfairly dismissed for making protected disclosures is dismissed.

59. The Tribunal did not find that the Claimant was subject to a detriment as a result of raising a protected disclosure.

60. That completes the unanimous decision of this Tribunal.

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Employment Judge Postle

Date: 3 January 2024

Sent to the parties on: 15 January 2024

T Cadman
For the Tribunal Office.