



EMPLOYMENT TRIBUNAL

Claimant: Mr. Conor McKnight
Respondent: Chelsea Football Club Ltd.
Hearing: Final Merits Hearing
Heard at: London Central ET (via video/CVP)
On: 4-8 December 2023
Before: Employment Judge Tinnion
Appearances: For Claimant: In person
For Respondent: Mr. Z. Sammour, Counsel

JUDGMENT

1. The Claimant's claim of unfair dismissal under ss.94-98 of the Employment Rights Act 1996 is well founded, but on procedural grounds only.
2. There is a 100% chance the Claimant would have been fairly dismissed for the conduct for which he was dismissed had the Respondent applied a fair procedure.
3. The Claimant engaged in serious culpable conduct which caused his dismissal, namely, sending the anonymous emails referred to at paras. 38-42 below.
4. The Claimant is not entitled to a basic or compensatory award for unfair dismissal.

REASONS

Claims

1. By his ET1 [7-18] Claimant Mr. Conor McKnight presented a claim of unfair dismissal under ss.94-98 of the Employment Rights Act 1996 against his former employer, Respondent Chelsea Football Club Ltd. (**CFC**).
2. In its ET3 [26-33] and Grounds of Resistance [34-37], CFC denied the claim. It contended the Claimant had been fairly dismissed for gross misconduct, but if he was unfairly dismissed (a) he caused/contributed to his dismissal and should receive

no basic or compensatory award (b) he would have been fairly dismissed had a fair disciplinary procedure been applied.

Final merits hearing

3. The final merits hearing was held via video/CVP on 4-8 December 2023 (**Final Hearing**). The Claimant represented himself. CFC was represented by counsel. The parties relied on three bundles: a document bundle of 929 pages, a correspondence bundle of 285 pages, and a witness bundle of 66 pages containing the statements of the Claimant, Ms. J Stone (CFC Director of Human Resources since 10 January 2022), Ms. R Hurst (HR Business Partner since November 2021), and Mr. S Atkins (Director of Communications and Public Affairs up to December 2022). References in square brackets are to the relevant page(s) of the document bundle. The Tribunal heard evidence from all four witnesses. The Respondent submitted a skeleton.

Issues

4. A list of issues for determination at the Final Merits Hearing was appended to the Case Management Order of EJ Keogh [49-50].

Findings of fact

5. The Tribunal makes the following findings of fact, including any findings contained in the other sections of this document, on the balance of probabilities. The findings are limited to those the Tribunal deems necessary to deciding the issues.
6. CFC is the well-known Premier League football club. Between 17 June 2019 and 30 May 2022, CFC employed the Claimant as a groundsman. It is not in dispute that the Claimant and his late father David McKnight (**Mr. McKnight**), who also worked for the club, were lifelong fans of CFC.

2019

7. On 16 June 2019, the Claimant signed his employment contract with CFC [89-99], and Schedules 1 (working time) [100] and 2 [101-105] thereto (confidentiality and privacy undertaking). When he joined, the Claimant's line manager was Jason Griffin (**Mr. Griffin**), who had a son (**R Griffin**) who also worked for CFC. Groundstaff member L Martin (**L Martin**) was also employed by CFC at the time.
8. On 16 December 2019, the Claimant attended a work-related Christmas social event at a pub in Cobham with work colleagues, including Mr. Griffin. It is not in dispute that at that event, an incident (possibly two) involving them occurred - what is in dispute is what happened in each. On the Claimant's account, at some point Mr. Griffin threatened to kill the Claimant, stating "*You will be leaving here in a body bag*", after which the Claimant says Mr. Griffin threw him against a wall, then grabbed him by his genitals and squeezed them.
9. Video footage after the incident captured on a mobile phone showed the Claimant sitting down on a bench, clearly upset. The Claimant took a taxi home as he was unfit to drive. The Claimant alleges when he got home, he discussed the incident

with his father, who telephoned Mr. Griffin, R Griffin and L Martin asking what they had done. The Claimant alleges someone – he initially accused R Griffin and L Martin – of having let his car tyres down that evening.

10. The Claimant did not go to work on 17 December 2019. However he returned to work the following day. Neither the Claimant nor anyone else lodged a grievance in 2019 about Mr. Griffin's conduct at the December 2019 event.

2020

11. In 2020, the Claimant attended work as normal. Mr. Griffin remained his line manager. Along with other colleagues, the Claimant attended Mr. Griffin's 50th birthday party. In 2020 neither the Claimant nor anyone else raised a grievance about Mr. Griffin's conduct at the December 2019 event. The Claimant's witness statement does not make any mention of events in 2020.

2021: January – September

12. In the first half of 2021, the Claimant continued attending work. On 9 July 2021, however, the Claimant began a period of sickness absence (which continued until his dismissal) which he attributes to a further incident involving Mr. Griffin. The sick notes eventually began referring to stress at work as the reason for absence.

October 2021: Grievance

13. By email on 4 October 2021 [119-120] from a Hotmail account, the Claimant submitted a grievance to Mr. B Buck and Ms. S. Atkinson (HR Business Partner) raising numerous matters, including the following:

- (a) 16 December 2019 – “physical incident” with Mr. Griffin on work-related event;
- (b) 16 December 2019 – drink spiked by R Griffin and L Martin;
- (c) 16 December 2019 – car tyres let down in car park;
- (d) undated – threatened with poor reference by Mr. Griffin on numerous occasions;
- (e) 9 July 2021 – Mr. Griffin pursued Claimant down training ground road on a Gator shouting/wrongly accusing him of trying to leave work early;
- (f) 6 August 2021 – Mr. Griffin bullied and abused Claimant over the telephone, stated he was “going to get everyone together at Cobham and hold a meeting to discuss the things they did not like about [the Claimant]”;
- (g) undated – after Claimant called Mr. Griffin to tell him he would not be at work for the next couple of weeks, Mr. Griffin shouted down the phone “You have another sick note coming”;
- (h) undated – Mr. Griffin and R Griffin took Claimant off Premier League testing for the remainder of the season.

14. On 12 October 2021, the Claimant attended a grievance meeting chaired by Sara Matthews (Director of HR) and S Atkinson. At the meeting, the Claimant provided further details of his allegations, including an allegation that on 16 December 2019 Mr. Griffin had head-butted him.
15. By letter dated 13 December 2021 [121-130], Ms. Matthews notified the Claimant of her findings and outcome in respect of the grievance. Summarising:
16. First, Ms. Matthews found that at the December 2019 event, Mr. Griffin had pushed the Claimant (Mr. Griffin admitted doing so), agreed this was unacceptable behaviour, and stated appropriate action had been taken (she declined to state what action on privacy/confidentiality grounds, but it is not in dispute that Mr. Griffin was not dismissed). She did not uphold any other complaint about Mr. Griffin's conduct at the event, eg the Claimant's allegations of sexual assault or a death threat.
17. Second, Ms. Matthews did not uphold the Claimant's complaint that R Griffin and L Martin had spiked his drinks that evening [122].
18. Third, Ms. Matthews did not uphold the Claimant's complaint that R Griffin and L Martin had let down his car tyres that evening [122-123].
19. Fourth, Ms. Matthews did not uphold the Claimant's complaint that Mr. Griffin had threatened to provide him with a poor reference [123].
20. Fifth, Ms. Matthews found R Griffin used the "c" word in a telephone conversation with the Claimant, but made no finding that R Griffin had called him a "c" [123-124].
21. Sixth, although the Claimant was owed overtime, Mr. Griffin did not deliberately not pay him that overtime [124].
22. Seventh, Mr. Griffin had legitimately raised the Claimant's signing his new contract with the Claimant. There was no finding that Mr. Griffin had raised this in an inappropriate manner, but Ms. Matthews noted other leavers had raised similar concerns regarding the way Mr. Griffin might speak, and stated Mr. Griffin's management style would be addressed with him directly [124-125].

2021 – 2022: Grievance appeal

23. The Claimant was not satisfied with the grievance outcome. By email on 16 December 2021 [131-137] he submitted an appeal on which he cc-ed a large number of CFC recipients [131]. Although his appeal was wide-ranging, central to it was his claim that CFC had done nothing about Mr. Griffin's behaviour at the December 2019 event:

"You are doing nothing about it and allowing said behaviour to continue. This needs to be addressed and solutions put in place to make sure nothing like this can ever happen again to anyone else[.] I do not want anyone to go through what I am going through mentally it has traumatised me and it will be a series of events that will remain with myself for the rest of my life that I have to deal with and currently every day I am reminded of it because I cannot do my job anymore and

*I am suffering and struggling with it because of it both mentally and financially ... **Jason Griffin seems to be Lieng [sic]** and claiming absurd things and it does not justify his response to violently assault me two times once going to the toilet and then again about 45 minutes later even worse than the first ... I cannot return to work with staff who I fear will assault me again.” (emphasis added)*

24. By email on 17 December 2021 [138-139], R Hurst invited the Claimant to attend a grievance appeal hearing on 4 January 2022 - rescheduled to 11 January [152] - where his appeal would be heard by Paul Ramos, CFC Director of Finance. On 4 January 2022, the Claimant sent a further email [140-145] raising 16 numbered complaints, no. 2 of which complained about the December 2019 event in the following terms: “*Evidence #2 Assault and Sexual Assault (Football Club already has the video footage and evidence Sara Matthews grievance email confirms and Jason Griffin admitted about it in your signed document*” [140]. On 8 January 2022, the Claimant added a 17th complaint [154].
25. On 11 January 2022, the grievance appeal hearing was conducted, attended by the Claimant, his father D McKnight, Mr. Ramos (chair) and R Hurst (HR). A reasonably accurate non-verbatim note of the meeting was taken [170-196]. The first point of appeal noted was the Claimant’s dissatisfaction with the findings and outcome of the Claimant’s grievance regarding the December 2019 event [170]. The Claimant alleged there had been two incidents involving Mr. Griffin at the party – one captured on video which the Claimant had not seen and did not recollect (which others had told him about), which Mr. Ramos said showed Mr. Griffin going into a toilet, the Claimant being egged on by others to follow him, Mr. Griffin saying don’t come in here, the Claimant following him in and Mr. Griffin pushing the Claimant [172]. The Claimant said the second incident was Mr. Griffin claiming he had said something inappropriate, grabbing the Claimant by the genitals and pushing him, Mr. Griffin using his head to brush the Claimant on the cheek, the Claimant pulling his face away so Mr. Griffin could not make contact, then two bystanders intervened and took the Claimant outside then being put in a taxi home [172-173].
26. When Mr. Ramos asked the Claimant what assurance he could provide that appropriate action had been taken against Mr. Griffin relating to the December 2019 event, the Claimant replied “*the problem is that he laid his hands on me and pushed me and he admitted this which is wrong. In the email it says for me to have a meeting with him knowing full well what I have gone through. This shows that you haven’t done anything. He is still working, I am the one not working. I am suffering and you’re trying to make me have a meeting with him.*”[174]. Ms. Hurst attempted to explain how mediation was meant to work. The Claimant replied there was no guarantee Mr. Griffin would not assault him again [175].
27. After reviewing the other grounds of appeal [175-187], Mr. Ramos asked the Claimant what outcome he sought, to which the Claimant clearly indicated he wanted Mr. Griffin dismissed: “*It’s all very well saying that I don’t want anyone to be sacked but I think Jason cost himself his job ... He laid his hands on me and wasn’t suspended, this is all just a cover up*” [187]. The Claimant reiterated that point: “*I know you have asked me about the outcome, I don’t want people to be sacked but I don’t know how you are trying to defend someone who assaults people.*” [195].

Claimant's views

28. Between 11 January (grievance appeal meeting) and 24 February (grievance appeal outcome) 2022, the Claimant sent numerous emails stating in clear, unambiguous terms what he thought and believed.

29. On 7 February 2022, the Claimant sent an email to Ms. Hurst (and others) [238-239] stating (in relevant part):

“Human Resources director Sara Matthews did nothing but admit the assault happened and tried to cover it up and arrange a meeting between me and the very manager who I fear will assault me again ... I will continue to fight and argue my points because it is disgusting how the organisation has treated me and trying to justify it only makes it worse and anyone who tried to justify assault as if it deserved is just as bad as the bullies.” [238]

30. On 17 February 2022, the Claimant sent an email to Ms. Hurst [242-243] stating (in relevant part):

“I am still very upset about the emails and documents that I received from Sara Matthews that show [CFC] does not care about victims of sexual abuse or bullying (myself) ... You should stand for all victims of abuse and protect them not try to justify the bullying and try to defend the bullies and become a part of the bullying as an organisation”;

31. On 17 February 2022, the Claimant sent a further email to Ms. Hurst (and numerous others) at 14:24 [240-242], this time threatening (with random capitalisations) to publicise his allegations against Mr. Griffin outside of Chelsea Football Club:

*“Please keep me updated I have more emails to send, **The next approach will not be as silent or behind closed doors.** Protecting and looking after victims of assault and sexual assault / death threats from your managers should be your priority not protecting the bullies. I am sure outside sources and fans will make their own view on matters and find it as disgusting as I do that [CFC] does NOT stand with the victims. Staff of [CFC] I hope do not want to work with individuals who assault people as witnesses and everyone already told you and you received video evidence and proof of [] the assault I am victim/survivor of. I wont keep quiet about the situation Sara Matthews, Paul Kingsmore and now your actions are disgusting there is no protection in the work place [environment] at Stamford Bridge or The training ground at Cobham That will protect staff from assault from these individuals especially with academy players minors children fans and parents around that should be the football Clubs priority not trying to protect ‘Jason Griffin’ when he assaults your employees.” [241] (emphasis added)*

24 February 2022: Grievance appeal outcome

32. By letter dated 24 February 2022 [245-263], emailed to the Claimant that day [266], under 19 numbered headings Mr. Ramos notified the Claimant of the outcome of his grievance appeal. Summarising, for the reasons set out in the letter Mr. Ramos

reached the following conclusions about the December 2019 event:

- a. Mr. Ramos did not uphold the Claimant's allegation that Reiss Martin and L. Martin had spiked his drinks with shots that evening [246];
 - b. Mr. Ramos reviewed the video footage of the first incident (which the Claimant could not remember) and found it showed the Claimant having followed Mr. Griffin into the toilet (having been warned by his colleagues not to), Mr. Griffin not having made death threats to the Claimant, and held that the Claimant's behaviour here had been concerning and inappropriate [247];
 - c. Mr. Ramos accepted during a later incident Mr. Griffin had inappropriately pushed the Claimant, and stated appropriate action had been taken [247];
 - d. Mr. Ramos did not uphold the Claimant's allegation that Mr. Griffin had sexually assaulted him by grabbing his genitals [247-248];
 - e. Mr. Ramos did not uphold the Claimant's allegation that Reisse Martin had let down his car tyres [248].
33. Mr. Ramos made recommendations based on his findings, including affirming a previous recommendation that Mr. Griffin undertake management training [262]. Mr. Ramos' letter stated his decision on the matter was final [262].
34. By email on 27 February 2022 [264-266], the Claimant acknowledged receipt of the grievance appeal outcome letter, and knew the grievance process was concluded with no further steps available to him under it to pursue his allegations against Mr. Griffin. He stated he was surprised by the outcome, and stated he was "*expecting nothing more but cover ups and lies.*" The Claimant accused Mr. Ramos and Ms. Hurst of being accomplices to the issues the Claimant had brought to light [265]. The Claimant noted "*you clearly intend to keep Jason Griffin after what he has done for whatever reason*" [265].

2022: Claimant attempts to publicise his allegations against Mr. Griffin

35. At the 11 January 2022 grievance appeal, Ms. Hurst explained to the Claimant why she had been removing people the Claimant had been cc-ing on their email exchanges – to protect the independence of the appeal process [189]. At that meeting, the Claimant agreed going forward to send his emails to Mr. Ramos and Ms. Hurst only. In breach of that assurance:
- a. on 15 January 2022, the Claimant sent an email to Mr. Ramos and Ms. Hurst cc-ing CFC officers P Kingsmore and B Buck [201], in response to which Ms. Hurst reminded him to direct his emails to her and Mr. Ramos only [201];
 - b. on 25 January 2022, the Claimant sent an email to Mr. Ramos and Ms. Hurst, this time cc-ing not only Mr. Buck but numerous non-CFC parties - Surrey Police (B Brooking), Premier League Safeguarding, Football Association (K Higgins, D Gregson) [199];

- c. on 26 January 2022, the Claimant sent an email to Mr. Ramos and Ms. Hurst attaching video evidence he relied upon, on which he again cc-ed Surrey Police, Premier League Safeguarding, and the Football Association [197];
 - d. on 1 February 2022 at 14:25, the Claimant sent a further email which included a wide distribution list;
 - e. on 17 February 2022, the Claimant sent an email to Mr. Ramos and Ms. Hurst cc-ing numerous CFC officers as well as Surrey Police, Premier League Safeguarding, and the Football Association [240].
36. In his grievance appeal outcome letter, Mr. Ramos mentioned the 1 February 2017 email and stated it was a potential breach of the Claimant's employment contract and CFC's disciplinary and data privacy policies which would be investigated.
37. By email on 27 February 2022, the Claimant gave a further assurance that he would not email anyone other than Mr. Ramos and Ms. Hurst [264].

Anonymous Email #1

38. On 17 May 2022, an anonymous email was sent 980 times [268-285] (**Email #1**). Under the subject heading "*Chelsea Football Club Scandal – Cover up Assault and Sexual Assault*", that email provided a link to two videos, one of which was the video allegedly showing Mr. Griffin sexually assaulting the Claimant and making death threats. The email identified Mr. Griffin and his son R Griffin as the "*Offenders*", identified B Buck, P Kingsmore and L Martin as CFC staff involved in ignoring work place assault bullying and victimisation, and named the Claimant as the victim in relation to the second video (the first video referred to a different incident involving a different alleged victim). The email provided links to websites where complaints could be made about CFC. The email was sent to, amongst others, Brentford Football Club, who contacted CFC to make them aware of this [286].
39. Regardless of who sent it, Email #1 made allegations and complaints about Mr. Griffin, R Griffin and CFC materially identical to those the Claimant had been making.

Anonymous Email #2

40. On 26 May 2022, a further anonymous email substantially similar to Email #1 was sent to 314 email addresses [673-674] (**Email #2**).

Anonymous Email #3

41. On 27 May 2022, a further anonymous email substantially similar to Email #1 was sent to 145 email addresses (**Email #3**).

Anonymous Email #4

42. On 28 May 2022, a further anonymous email substantially similar to Email #1 was sent to 145 email addresses [287-288] falsely identifying its sender as "JasonGriffin5C" [287-288] (**Email #4**, collectively, **Anonymous Emails**).

Reaction to Anonymous Emails

43. Ms. Hurst brought the Anonymous Emails to the attention of Jo Stone (CFC Director of HR). Ms. Hurst suggested, and Ms. Stone agreed, the Claimant had either sent them or instructed someone else to send them. Ms. Stone decided the situation was untenable. She believed the evidence against the Claimant was overwhelming, and decided an investigation or disciplinary meeting would serve no useful purpose.

30 May 2022: Summary dismissal

44. By letter dated 30 May 2022, Ms. Stone dismissed the Claimant with immediate effect [292-302]. Summarising, Ms. Stone told the Claimant he was being dismissed because of the following conduct:

45. First, sending the 17 February 2022 email at [240] – see [295, paras. 5-1 – 5.1.3].

46. Second, sending (or instructing someone else to send) the Anonymous Emails to recipients within CFC as well as outside clubs, organisations and individuals [297, paras. 6-7] which she considered gross misconduct.

47. Third, the Claimant had publicly defamed and disparaged CFC by what was said in Emails #1 and #3 [298, para. 10].

48. Fourth, sending bullying, harassing, abusive and threatening emails to the Claimant's work colleagues over the preceding 12 months, which she found to have destroyed all trust and confidence in the Claimant [299, paras. 11-13].

49. Ms. Stone's letter ended by informing the Claimant of his right of appeal and how it should be exercised [301].

50. It is not in dispute that the Claimant's dismissal on 30 May 2022 was not preceded by the following steps: prior notice to the Claimant that CFC was considering his dismissal; prior notice to the Claimant of the factual allegations which were being made against him; prior notice to the Claimant that those factual allegations – if found to be true – might result in his dismissal; the provision of any evidence relied upon; allowing the Claimant the opportunity to state his case before his dismissal; allowing the Claimant to be accompanied at a disciplinary meeting considering his dismissal; allowing the Claimant an opportunity for a work colleague or union representative to make representations on his behalf prior to the decision to take disciplinary action.

Technical IT evidence

51. On the date of dismissal, CFC did not have any forensic IT evidence showing or suggesting the Claimant had sent (or been responsible for sending) the Anonymous Emails. IT evidence was subsequently obtained, but only after the Claimant's dismissal, which was not shared with the Claimant during his appeal.

52. The report dated 16 June 2022 was prepared by IT firm Blockphish [319-370]. Their brief was to assist CFC with its investigation into the Anonymous Emails looking for "relatable information" linking them to the Claimant [324]. Summarising, Blockphish's

findings were as follows:

53. First, the data/information provided contained no concrete evidence that could “*legally be linked*” to the Claimant [326].
54. Second, the Claimant possessed a skillset - a high level knowledge in IT, IT security, Coding, Webhosting, Networking, Internet Protocols, hacking techniques, hacking prevention [362].- that suggested he was capable of carrying out the attacks [326].
55. Third, the Claimant had an IT/developer background, and developed a number of specialist tools some of which related to the methods carry out in the attack. Tools he had written could be utilised in an attack of the kind made [362].
56. Fourth, on 8 May 2022 – just over a week before Email #1 - the Claimant made a number of changes to one of his tools – Cloudflare-to-IP [362].
57. Fifth, Cloudflare owned the DNS servers of the attack domains the sender of the Anonymous Emails had used – forward.me and Chelsea.futbol.
58. Sixth, the attacks against CFC were using automation to create subdomains/emails which could be related to the functionality of this Cloudflare-to-IP tool [363].

Dismissal appeal

59. By email on 31 May 2022, the Claimant appealed against his dismissal [314-316]. In sum, the Claimant denied sending the anonymous emails, and denied having been anything other than professional and complaint with CFC’s policies and procedures regarding his grievance. The Claimant noted he had been dismissed without a meeting with him, and stated he was not getting a “*fair trial*” [316].
60. By letter dated 14 June 2022, the Claimant’s appeal was acknowledged. From 29 June 2022, the Claimant exchanged numerous emails with Ms. Hurst, some of which raised concerns about the Claimant’s mental health and wellbeing. Ms. Hurst took those concerns seriously, contacted CFC’s Safeguarding team, and advised the Claimant to seek urgent medical help.
61. The Claimant was not invited to an appeal hearing. Instead, CFC decided to conduct a paper-based review of his grounds of appeal, as stated and understood in his 31 May 2022 email. The appeal was decided by Mr. S. Atkins (CFC Director of Communications). By letter dated 5 August 2022 [468-472], Mr. Atkins dismissed all grounds of appeal. Summarising:
62. First, Mr. Atkins rejected the Claimant’s appeal that no documentation or evidence had been supplied to him to support the rationale behind the dismissal on the grounds that the dismissal rationale had been communicated to the Claimant in the dismissal letter. Mr. Atkins enclosed copies of the Claimant’s 17 February 2022 email [473] and the Anonymous Emails.
63. Second, Mr. Atkins rejected the Claimant’s appeal that the allegations against him were false and he had not done what he was accused of [469-470] (with reference

to the Claimant's email sent 17 February 2022).

64. Third, Mr. Atkins rejected the Claimant's appeal that he did not understand how he had been hostile or offensive in his communications with colleagues, referring to the Claimant's accusations that CFC members of staff were disgusting, hostile, corrupt and liars [470].
65. Fourth, Mr. Atkins rejected the Claimant's appeal based on his allegation that the club had already been sent a particular video before the Claimant shared it with the club [470]. Mr. Atkins pointed out that this did not mean the Claimant did not have that video in his possession at the time the Anonymous Emails were sent.
66. Fifth, Mr. Atkins rejected the Claimant's appeal that he had not sent the Anonymous Emails. Mr. Atkins provided the following rationale [470-471]:
 - a. terminology in and the format of the Anonymous Emails was the same or very similar to those the Claimant had used in his grievance and grievance appeal, eg the common misspelling of the word "lying" as "Lieng" and "liar" as "lier";
 - b. one of the videos the Anonymous Emails contained a link to was a video the Claimant had provided to CFC as part of his grievance appeal;
 - c. following further investigation, CFC was of the view that the Claimant had the capabilities to send the Anonymous Emails given his skillset as an IT developer in networking and security;
 - d. the timing of the Anonymous Emails coincided with when the Claimant was expressing direct frustration at CFC;
 - e. CFC was not aware of anyone else with these specific grievances;
 - f. it was reasonable for CFC to believe on balance that the Claimant sent the Anonymous Emails or instructed someone else to send them on his behalf.
67. Mr. Atkins did not make the Claimant aware of the Blockphish report and did not provide a copy of it to him.

Further anonymous emails

68. Further anonymous emails (including emails not sent by their purported sender) making substantially similar allegations to Email #1 were sent on 14 June 2022 [679-681], 4 July 2022 [682-684], 7 July 2022 [685-868], 29 July 2022 [687-689], 30 July 2022 [413-415], 3 August 2022 [697-698], and 4 August 2022 [461-463].
69. By no later than 2 August 2022, the Claimant was using a 'protonmail' email account to send emails [691]. Protonmail provides a high security email service employing end-to-end encryption. The Tribunal infers the Claimant was using protonmail to make it as difficult as possible for any third party (eg, law enforcement) to access his emails without his consent.

70. In August 2022, more anonymous emails solely targeting Mr. Griffin were sent [700-701, 702-703, 704-705, 706, 714-715], on their face from a protonmail account.

High Court Claim – Default Judgment

71. By letter dated 21 June 2022, CFC’s solicitors requested an undertaking from the Claimant to cease sending the information contained in Emails #1-4 and not to repeat the allegations against Mr. Griffin, R Griffin and L Martin [371—373]. The Claimant did not admit sending those emails, and did not give an undertaking.

72. On 12 August 2022, CFC issued a High Court claim against the Claimant alleging harassment. On 22 September 2022, CFC obtained an interim injunction against the Claimant ordering him not to communicate with CFC or send anyone hardcopy or electronic documents referring to his grievance or containing the personal details of Mr. Griffin, R Griffin or L Martin [827-833]. The Claimant did not file a Defence to the claim, and a default judgment was entered. On 17 May 2023, the Claimant’s application to set aside the default judgment and to file and serve a Defence out of time was dismissed. The Claimant has sought to appeal that decision.

Law

73. Section 98(4) of the Employment Rights Act 1996 provides (in relevant part):

- (1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
 - (a) *the reason (or, if more than one, the principal reason) for the dismissal, and*
 - (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) *A reason falls within this subsection if it ...*
 - (b) *relates to the conduct of the employee ...*
- (4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
 - (a) *depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
 - (b) *shall be determined in accordance with equity and the substantial merits of the case.*

74. The fairness of the dismissal must be judged based on the facts and circumstances before the employer at the time of dismissal. A dismissal will be unfair if, and only, *considered as a whole* the dismissal fell outside the band of reasonable responses open to the employer at the time – the Tribunal must not focus solely on the substantive or procedural fairness of the dismissal. The issue of whether the Tribunal itself would have dismissed the employee for the conduct at the time is irrelevant.
75. When considering whether a dismissal for misconduct was fair, the Tribunal should consider (a) whether the respondent genuinely believed the employee was guilty of the misconduct (b) whether the respondent had in its mind reasonable grounds for that belief at the time (c) whether at the time the respondent had formed its belief in the employee's guilt, it had carried out as much investigation into the matter as was reasonable in all the circumstances. British Home Stores v Birchell [1980] ICR 30.
76. The test "*all the way through*" is reasonableness - the employee is not required to be "*sure*", nor is there any requirement that guilt be proven "*beyond reasonable doubt*". The range of reasonable responses test applies to whether the investigation was reasonable. Sainsbury's Supermarkets v Hitt [CB/2002] EWCA 1588, para. 31.
77. In determining whether a disciplinary dismissal was fair, the Tribunal may take into consideration the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Unfair Dismissal – Discussion / Conclusions

Reason for dismissal

78. The Tribunal is satisfied the reason for the Claimant's dismissal was for the potentially fair reason of conduct, specifically the Claimant's undisputed conduct in sending his 17 February 2022 email and CFC's belief that the Claimant had sent (or instructed someone else to send) the Anonymous Emails. The Tribunal is not satisfied the Claimant was dismissed because he had been aggressive towards members of CFC's HR and legal team.

Fair dismissal

79. For the reasons set out below, the Tribunal is satisfied the Claimant's dismissal for that conduct was outwith the band of reasonable responses open to CFC at the time.
80. First, it is not clear that CFC conducted any form of investigation before dismissing the Claimant on 30 May 2022. CFC did not conduct an investigatory meeting with either the Claimant or any other witness before the dismissal.
81. Second, CFC did not notify the Claimant of the factual allegations it was considering against him before it dismissed him.
82. Third, CFC did not notify the Claimant that he was at risk of dismissal before it dismissed him or why.

83. Fourth, CFC did not give the Claimant any opportunity to consider the evidence against him (or even tell him what that evidence was) before dismissing him.
84. Fifth, CFC did not give the Claimant any opportunity to make oral or written representations to Ms. Stone, the disciplinary officer, before dismissing him.
85. Sixth, by summarily dismissing the Claimant, CFC deprived the Claimant of his statutory right to be accompanied by a union representative or work colleague at a disciplinary hearing, who ordinarily would have been given the opportunity to make representations on the Claimant's behalf before any disciplinary decision was made.
86. Similarly, by conducting the Claimant's appeal on paper without an appeal hearing, CFC denied the Claimant his statutory right to be accompanied by a union representative or work colleague at an appeal hearing.
87. The Tribunal does not accept the undoubtedly rude, intemperate, and hostile language the Claimant used in his emails to Mr. Ramos, Ms. Hurst and others prior to 30 May 2022 justified or excuses the Claimant's summary dismissal without a disciplinary hearing. Had a disciplinary hearing been held, the Claimant would almost certainly have been accompanied by his father – a very well-respected member of the CFC community - and had a disciplinary hearing been held with his father in attendance, the Tribunal is satisfied the Claimant would not have acted in a rude, intemperate or hostile manner (at least not so rude, intemperate or hostile that the meeting could not be held at all). If CFC was concerned about its own staff's welfare, it could simply have instructed an outside solicitor's firm to conduct that hearing.
88. The Tribunal accepts that on 30 May 2022 Ms. Stone genuinely believed the Claimant had sent (or was responsible for sending) the Anonymous Emails. However, that belief was not based on entirely reasonable grounds – although at that stage there were clearly grounds to link the Claimant to those emails (they made the same allegations as the Claimant had been making in his grievance and grievance appeal, and contained distinctive spelling errors identical to those in documents the Claimant had authored), CFC had not obtained any forensic exercise which showed that there was – or might be – a link between the Claimant and those emails. Some attempt to investigate that very important issue was clearly required.
89. The Tribunal accepts this deficiency in the Respondent's investigation was remedied by the time Mr. Atkins notified the Claimant that his appeal was dismissed. Although Blockphish had been unable to find a 'smoking gun' directly linking the Claimant to the Anonymous Emails – because of the very considerable, successful efforts their sender had made to mask their origin/source and metadata – Blockphish's investigation had established that the Claimant had detailed knowledge of IT security and networking and the technical capability of sending those emails. Unfortunately CFC did not provide a copy of the Blockphish report to the Claimant, so while one important matter was remedied by the time of the appeal (a reasonable investigation), a new lacuna was created (not providing that important evidence to the Claimant). The Claimant had no opportunity to read the Blockphish report and make representations addressing its content and conclusions before his appeal was decided.

90. For the avoidance of doubt, the Tribunal accepts that by 5 August 2022, Mr. Atkins genuinely believed the Claimant was guilty of the misconduct of which he was accused, a reasonable investigation had now been conducted by that point in time, and Mr. Atkins had reasonable grounds for his belief in the Claimant's guilt. Notwithstanding that, the Tribunal is satisfied that CFC did not conduct a fundamentally fair disciplinary process (CFC conceded that its own policies normally require the holding of a disciplinary hearing) and that – looked at in the round – the Claimant's dismissal was unfair and outwith the band of reasonable responses.

Polkey

91. Having found the Claimant's dismissal was unfair because of serious procedural failings, the Tribunal is satisfied that had CFC applied a fair procedure, it is certain that CFC would still have dismissed the Claimant (and done so fairly) because CFC would reasonably have found the Claimant to have been the sender of the Anonymous Emails (or responsible for their sending) based on the evidence available to it at the time. The Tribunal's reasons for that conclusion are as follows:

92. First, unlike a criminal trial in the Crown Court, there was no obligation on CFC's part to be certain or sure beyond reasonable doubt that the Claimant was the sender (or responsible for the sending) of the Anonymous Emails – it was sufficient for it to be satisfied, on the balance of probability, that the Claimant had likely sent them (or been responsible for them). While the absence of a 'smoking gun' meant CFC could not be *certain* the Claimant was responsible, the absence of a 'smoking gun' did not mean CFC could not reasonably conclude the Claimant was *likely* responsible.

93. Second, the documentary evidence before CFC showed that the Claimant made the same allegations in his grievance, grievance appeal and email correspondence about Mr. Griffin, R Griffin and L Martin that the Anonymous Emails made about those individuals. The Tribunal accepts CFC's submission that no-one other than the Claimant was making allegations in 2021 and 2022 about Mr. Griffin's conduct in December 2019.

94. Third, the Claimant had the motive to send the Anonymous Emails. CFC had before it documentary evidence showing that the Claimant was wholly dissatisfied with CFC's conclusions in respect of Mr. Griffin's conduct at the December 2019 event: CFC rejected the Claimant's allegation that Mr. Griffin had sexually assaulted him; CFC rejected the Claimant's allegation that Mr. Griffin had head-butted him (or tried to); CFC rejected the Claimant's allegation that Mr. Griffin had made a genuine death threat to him; instead of finding that the Claimant was the victim, CFC had found that the Claimant was at least partially responsible for Mr. Griffin's conduct that day by following him into a toilet. Most importantly of all, the Claimant was wholly dissatisfied with CFC's decision not to dismiss Mr. Griffin for his admitted conduct at the December 2019 event (pushing the Claimant), and repeatedly made that clear.

95. Fourth, the Claimant was told in writing the grievance appeal outcome was final. CFC therefore had documentary evidence showing the Claimant knew there was no further internal process he could use to try to force CFC to reconsider its conclusions regarding Mr. Griffin's conduct or its decision not to dismiss him. In the absence of any other available internal process, the only option left was to attempt to force CFC

to reconsider based on an unauthorised external process (sending anonymous emails to parties outside the club, hoping the pressure and adverse publicity they would likely generate would force CFC to reconsider).

96. Fifth, CFC had documentary evidence before it showing (a) the Claimant was in the habit of attempting to circulate his allegations against Mr. Griffin to a wider audience outside of CFC (b) the Claimant had made an explicit threat to do so (“*next approach will not be silent or behind closed doors*”). CFC was entitled to conclude that the sending of the Anonymous Emails to recipients outside CFC was the Claimant carrying out that threat.
97. Sixth, the Blockphish report concluded the Claimant had the technical skills to send the Anonymous Emails. The Tribunal was not impressed by the Claimant’s efforts to suggest he had no more than average IT skills – most members of the public do not have a Github account.
98. Seventh, the Anonymous Emails contained distinctive spelling errors which were also present in documents the Claimant had unquestionably authored. When these errors were put to the Claimant, he downplayed them as insignificant spelling mistakes. In the Tribunal’s judgment, the Claimant made no real attempt to engage with the fact that the spelling errors in the Anonymous Emails were highly distinctive errors which matched identical spelling errors in documents he had drafted. It was reasonable for CFC to infer that the same hand likely drafted both.
99. Eighth, given the nature of the allegations made against Mr. Griffin, R Griffin, L Martin and CFC in the Anonymous Emails, the sending of those emails to recipients within and outside CFC was undoubtedly conduct constituting gross misconduct for which dismissal was the inevitable response (absent truly extraordinary mitigation).
100. Ninth, had a disciplinary hearing been held, the Tribunal assumes the Claimant’s defence would have been the same as the one he gave at the Final Hearing: to continue to deny he sent the Anonymous Emails, and to contend that there was no proof – ie, ‘smoking gun’ – he had done so. In the Tribunal’s judgment, CFC reasonably could – and would – have dismissed that defence given the considerable weight of circumstantial evidence that pointed firmly in the Claimant’s direction.
101. In light of the gravity of the misconduct involved in sending the Anonymous Emails, the Tribunal deems it unnecessary to address whether the Claimant could also have been fairly dismissed for sending the 17 February 2022 email.

Contributory conduct

102. For substantially similar reasons, based on the evidence before it at the Final Hearing the Tribunal is satisfied, on the balance of probability, and notwithstanding the absence of a clear ‘smoking gun’, that the Claimant likely did send the Anonymous Emails, and is therefore culpable of conduct which caused his dismissal. In sum:
- a. by October 2021, the Claimant was convinced he had been both assaulted and sexually assaulted by Mr. Griffin at the December 2019 event, believed

he had the evidence to prove it, and believed CFC had no choice but to dismiss Mr. Griffin for that conduct;

- b. the Claimant was grossly dissatisfied with CFC's response to his grievance and grievance appeal - including its rejection of his claim of a sexual assault, its decision not to dismiss Mr. Griffin, and its conclusion that the Claimant was himself partly at fault for what happened at the December 2019 event – and was not willing to let matters rest;
- c. the Claimant had the technical ability to send the Anonymous Emails himself, and did not require the assistance of a third party to do so;
- d. the Claimant had the opportunity to send the Anonymous Emails;
- e. the Claimant had the motive to send the Anonymous Emails;
- f. the Anonymous Emails made the same allegations against Mr. Griffin, R Griffin, L Martin and CFC which the Claimant had been making during the grievance process;
- g. the Claimant had threatened to publicize to a wider audience his allegations against Mr. Griffin, R Griffin, L Martin and CFC, and in the Anonymous Emails that is what he did;
- h. highly distinctive spelling mistakes in the Anonymous Emails matched identical spelling mistakes in documents the Claimant had authored – the same person likely drafted both;
- i. there were numerous other marked similarities between the Anonymous Emails and documents the Claimant had authored (listed at paras. 30(a)-(d)) of Ms. Hurst's witness statement) suggesting they were drawn up by the same hand;
- j. the Anonymous Emails were sent to the Grounds Management Association and by someone who knew the groundstaff at CFC and other Premier League clubs - organisations and people the Claimant was well familiar with;
- k. there is no other 'candidate' seriously in the frame to have been the sender of the Anonymous Emails (or responsible for their sending through a third party).

Signed (electronically): Employment Judge Tinnion

Date of signature: 22 February 2024

Date sent to parties: 5 March 2024